

ベトナム社会主義共和国  
ホーチミン国家政治行政学院 (HCMA)  
内務省  
国家行政学院 (NAPA)

ベトナム社会主義共和国  
ホーチミン国家政治行政学院  
公務員研修実施能力  
強化支援プロジェクト  
(公共政策大学院プログラム策定支援)  
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独立行政法人国際協力機構 (JICA)

国立大学法人政策研究大学院大学 (GRIPS)



## PUBLIC POLICY FORMULATION SYLLABUS

### A. Purpose

- Provide theory of policy formulation.
- Orient the methods applied in policy formulation.
- Improve capacity of public policy formulation.

### B. Requirements

At the end of the course, students will be able to:

#### *Knowledge:*

- Describe the steps and model of policy formulation.
- Explain the nature of the policy issues and how to identify policy issues.
- Clarify the need to make the issue be interested by the government.
- Presentation of the basic content and methods applied in the process of drafting a policy.
- Explain the criteria for selection of policy options
- Identify the process and conditions for analysis of policy options
- Identify the authority and responsibilities of stakeholders in the process of policy formulation.

#### *Skills:*

- Identify issues arising in economic life - society needs to be addressed by government policy
- Analyze the policy issues and their causes.
- Prepare a preliminary draft of the proposed policy
- Know how to choose policy options based on scientific criteria.

#### *Attitude:*

- Be interested in policy issues arising in economic life - society.
- Be innovative for solving policy issues.
- Be aware of both of theoretical and practical policy formulation

process.

- Have attention to present and persuade authorized entities (in policy making decisions) to ensure the policy to be promulgated.

## **C. The content:**

### **1. 1. Overview of public policy formulation**

#### ***1.1. Introduction of public policy formulation***

- The concept of public policy formulation
- The role of policy formulation in the policy process
- The demand for renovation of policy formulation in Vietnam's context

#### ***1.2. Principles on formulation of public policy***

- Public interest principle
- Democratic centralism principle
- Inheritance principle
- Systematic principle

#### ***1.3. Policy formulation process***

- Policy issues oriented Process
- Policy goal oriented Process
- Practice of application of policy formulation process

#### ***1.4. The model of policy formulation***

- Rational model
- Incremental model
- Mixed Model

#### ***1.5. Context affecting policy formulation***

- Political Institutions
- Cultural Environment
- Social characteristics
- Economic System

- International Relations

## **2. Identifying policy needs from arisen issues**

### ***2.1. Policy issues***

- Awareness of policy issues
- Origin arising issues
- Classification of policy issues

### ***2.2. Methods of finding policy issues***

- Self-discovery from officials work
- Through the grievances of the people
- Through the mass media
- Assigning tasks from above

### ***2.3. Identifying policy issues***

- Review of expression aspects of the issues
- Diagnosing the causes of policy issues
- Proposing the name of policy issues
- Preparing reports on policy issues
- Pitfalls needed to avoid in identifying policy issues

### ***2.4. Identifying policy needs***

- Identifying stakeholders affected by policy issues
- Clarifying the affected scope of policy issues
- Identifying consequences of issues without policy
  - + Preliminary expecting the level of consequences and impacts of the issues if there is no policy
  - + Reviewing the current policies for solving problems
- Identifying content of demand that people want in government

### ***2.5. Agenda setting***

- Reporting to competent authorities on policy issues
- The way to promote the interest of the authorities to policy issues

- + Lobbying
- + Impacting through media
- Recognition of policy issues by the competent authorities

### **3. Formulation of policy**

#### ***3.1. Responsibility for drafting policy***

#### ***3.2. Analysis of policy issues***

- Clarification of the nature of the issue
- Analysis of the causes of the issue
- Analysis of the consequences of the issue
- The methods of analyzing policy issues
  - + Gathering information
  - + Observing the practical scenery
  - + Statistics
  - + Data Analysis

#### ***3.3. Identifying policy objectives***

- The concept of policy objectives
- Clarifying the desired and unwanted outputs
- The approaches to policy objectives
  - + Approach of the policy makers
  - + Approach from the others stakeholders
- The importance of defining policy objectives
  - + Aiming at the cause of the issues
  - + Giving orientation for solutions
  - + Identifying the level of problem-solving
- How to define policy objectives
- The criteria for setting objective

#### ***3.4. Propose of policy options***

- What are policy options
- The types of policy options

- + The status quo options
- + The options of indirectly intervention
- + The options of direct intervention
- Why need to build the different policy options

### ***3.5. Designing solutions of each policy option***

- The concept of policy solutions
- The requirements of policy solutions
  - + Ensuring relationship among issues - goals - solutions
  - + Corresponding with implement capacity
  - + Consistent with politics
  - + Relevance with financial capacity
- Methods of designing policy solutions

## **4. Prior evaluating policy options**

### ***4.1. The need for prior evaluating policy options***

### ***4.2. The evaluation criteria***

- Efficiency
- Economy
- Equity

### ***4.3. The types of prior evaluation***

- Evaluation of the policy impacts
- Evaluation of the policy effectiveness
- Risk Evaluation

### ***4.4. The methods for prior evaluation***

- Forecast
- Cost - benefit Analysis
- Cost-effectiveness Analysis
- Decision Analysis
- Risk Analysis
- Assessment of environmental impact

- Applying the econometric model (computable general equilibrium model, micro-simulation model, micro - macro model)

## **5. Selection of policy options and making policy decisions**

### ***5.1. 5.1. Principles for choice of policy options***

- Entities selecting policy options
- The principles for selection of policy options

### ***5.2. The ways of selection***

- Considering the alternatives compare
- Getting expert opinion
- Context Analysis

### ***5.3. The criteria for selection of policy options***

Simply in terms of management

Appropriate political

Comparing costs and benefits

Effectiveness

Fairness

Legalization

Ethics

### ***5.4. Policy decision making***

- Authority to make policy decisions
- Conditions for making policy decisions
- The document expressions of policy
- Disclosure of Policy
- Distribution of the policy

## ***6. Officials Capacities in the public policy formulation***

### ***6.1. The required capacity of policymakers***

- Research capacity
- Idea Capacity
- Design Capacity

- Coordinating Capacity
- Decision making capacity

### **6.2. Capacity of public officials in the stages of the policy process**

- Capacity of determining policy issues
- Capacity of designing policy draft
- Capacity of policy analysis and pre- evaluation
- Capacity of making policy decisions

### **D. Teaching Methods**

Lecture

Case study

Group Discussion

Participation of Practitioners

### **E. References:**

1. Thomas R. Dye: Understanding Public Policy, 14th edition,
2. Larry N Garston: Public policy making – process and principles, 3th edition, M.E. Sharpe Press, 2010.
3. James Anderson: Public policy making, 7<sup>th</sup> edition, 2010.
4. Thomas A. Kirkland: An introduction to the policy process: theories, concepts and models of public policy making, 3th edition, M.E. Sharpe Press, 2011.
5. John W. Kingdom: Agendas, Alternatives, and Public Policies (Longman Classics Edition), Second Edition, Longman Publishing Group, 2012
5. TS. Le Vine Dan: Public Policy of the United States, Statistical Publishing House, 2001.



## COURSE OUTLINE

### POLITICS IN PUBLIC POLICY

#### 1. Information on faculties

##### a. Faculties in charge of compiling

Nguyen Dang Thanh

Titles, academic titles, degree: Professor, PhD.

Workplace The National Academy of Public Administration

Contact address: 77 Nguyen Chi Thanh - Dong Da – Hanoi.

Phone:

E-mail:

Main researches:

- Comparative politics
- Science of public policy in the context of Vietnam
- Theory of ruling party, organizing structure of the party, the state
- Theory of state administration

Nguyen Thi Thu Ha

Titles, academic titles, degree: PhD.

Workplace The National Academy of Public Administration

Contact address: 77 Nguyen Chi Thanh - Dong Da – Hanoi.

Phone:

E-mail:

Main research:

- Construction of socialist legitimate state in the current political regime in Vietnam
- The role of political factors to planning public policy today
- Issues of the international politics, globalization and international integration.

**b. Expected lecturers:**

1. Professor, PhD Nguyen Dang Thanh
2. PhD Nguyen Thi Thu Ha
3. Associate Professor, Ph D Truong Quoc Chinh
4. PhD Nguyen Hoang Anh

**2. General information on the unit**

- Course name: Politics in Public Policy
- Course code: CSBB1
- Credit: 2 (30 lessons)
- Unit requirements: Mandatory
- Pre-requisite: Philosophy
- Other requirements:
- + Have learning documents
- + Have knowledge (in different levels) of policy process in the practice
- Credit hours:
  - + Theory: 15
  - + Discussion: 10
  - + Case study: 5
- Faculty/Department in charge of the unit: Theoretical Basics Faculty.

**3. Objectives**

- Knowledge: Students recognize and understand aspects that politics dominates and affects process of planning, implementing and evaluating policies.
- Skills: Students obtain vision, acumen on the political area when engaged at different levels in the process of planning and analyzing policy in reality.
- Attitude: Students obtain the objective, comprehensive, insightful attitude, avoid one-sided views when they approach, explain, resolve policy issues in reality.

**4. Course Summary**

Basic understandings on nature of “public policy” and “politics” concepts should be obtained. The political system and the policy formation process, the relationship between the political regime and policy, state power in implementing policies and politics to policies in Vietnam.

## 5. Course Outline

### CHAPTER I: OBJECTS, CONTENTS AND RESEARCH METHODS OF POLITICS IN PUBLIC POLICY

1. Concepts of “public policy”, “politics”
  - 1.1. The concept of “public policy”
    - Some definitions from different perspectives
    - The different aspects of “public policy”
    - The definition of “public policy”
    - The essence of public policy
  - 1.2. The concept of “politics”
    - What is Politics?
    - Definition
    - The essence of politics
    - Structure
2. Objects and contents of the unit “Politics in public policy”
  - 2.1. Objects
  - 2.2. Contents
  - 2.3. Aspects of political influence on the policy process
    - The political system and the policy formation process
    - Political regime and policy
    - The power state in implementing policies
3. Research methods
  - 3.1. Theoretical research
  - 3.2. Practice summary
  - 3.3. Analyzing the actual situation in the policy process

## **CHAPTER II: THE POLITICAL SYSTEM AND POLICY FORMATION PROCESS**

- 2.1. Political parties in policy formation
  - Political Party in policy determining
  - Political Party in policy planning
  - Political party in policy decisions
- 2.2. The role of state agencies in policy formulation
  - The executive authority
  - The legislative body
  - The judicial authority
- 2.3. The role of political organizations, political and social institutions in policy formation
- 2.4. The role of the press and public opinion in policy formulation

## **CHAPTER III: REGIME OF POLITICS AND POLICY**

- 3.1. Regime of legal rights and policy
- 3.2. Democracy and policy
- 3.3. Class nature of the state and priorities in policy
- 3.4. Justice, equality requirements and group benefit issues in the policy

## **CHAPTER IV: STATE POWER IN POLICY IMPLEMENTING**

- 4.1. The role of government in implementing policies
  - 4.1.1. The implementing works
    - Propagate and disseminate the policy
    - Propose measures, procedures, processes and standards
    - Build strategies, programs, plans and projects

- Mobilize resources, connect forces, assign tasks, determine responsibility for organizations and individuals in the implementation of policy

- Urge, inspect, test, summarizing lessons learned, organize emulation and commendation, discipline, resolve complaints and denunciations

- Provide public services, organize career activities

#### 4.1.2. The requirements for policy implementation

- Serious

- According to the law

- Faithful to the policy content

#### 4.2. Role of legislative body in monitoring the implementation of policy

- Request the executive authority to report and explain

- Question

- Assess on site

- + Propose the executive authority to make additional adjustments

- + Decide to suspend, temporarily suspend the policy implementing

#### 4.3. Adjudication role of judicial authorities for violating the implementation of policy

- Judge the complaints and denunciations of citizens and organizations to the executive authority after handling unsatisfactory

## **CHAPTER V: POLITICS WITH POLICY IN VIETNAM**

### 5.1. The political system and policy competence

#### 5.1.1. Characteristics of political system in Vietnam

- The original and unique led by Communist Party

- The members of the political system created by the Communist Party had a glorious history of struggle, have great role in the liberation and defense of the country

- Political system is of profound people's nature

- Organized on wide range, tightly on the principle of democratic centralism

#### 5.1.2. Authorised Competence of policy making

- The Party Agencies:

Party Congress

The Central Executive Committee

The Political Bureau

The Secretariat

Party committees

- The government agencies:

+ National Assembly

National Assembly Standing Committee

Nationality Council and Commissions of the National Assembly

Congressman

+ Court and Procuracy

Judicial Council of the Supreme People's Court

The Chief Justice of the Supreme People's Court

The Procurator Committee of the People's Procuracy Supreme

Director of Institute of the Supreme People's Procuracy

+ Government

Prime Minister

Minister

- The socio-political organizations

#### 5.2. Process of national policy planning

##### 5.2.1. Phase of forming the basic notions of policy

##### 5.2.2. Phase of state institutionalization

#### 5.3. Aims of policy in Vietnam

Target system

- General, long-term target: to develop Vietnam a power country of prosperous people and fair, democratic and civilization society

- Mid-century goals:

- Mid-term goals up to 2020: Vietnam basically becomes an industrial country towards modernization

#### 5.4. Some pros and cons of policies in Vietnam

##### Pros

- Basic systematic, comprehensive and consistent progress on humanitarian goal, reflects the essence of the political regime of the people, by the people, for the people

- The process of policy making is increasingly democratic, professional

##### Cons

- It lacks of long-term and consistent policies. Policies are easily alterable

- There is misleading, lack of strictness in the policy implementation by both the State and people.

#### 6. Necessary Documents

##### - Core Documents

1. The Communist Party of Vietnam (2011), Document of Congress XI National Communist Party of Vietnam, National Politics Publisher, Hanoi.

2. Institute of Public Administration (2006), Public Administration Curriculum, Science and Technology Publisher, Hanoi

3. Academy of Public Administration, Political in Public Management lectures – Master Program in Public Management

4. Academy of Public Administration (2008), Political Science Textbook Science and Technology Publishing House, in Hanoi

5. Nguyen Dang Thanh (2010), Power, political power-sense, the concept, the basic characteristics. Politics Information, No. 1/2010.

##### - In Vietnamese

1. Nguyen Dang Dung and Bui Ngoc Son (2004), Political Institution, Political theory Publisher, Hanoi.

2. Nguyen Dang Dung (2008), the Government of the rule of law, National university Publisher, Hanoi.

3. S.Chiavo-Campo and PSASundaram (2003), catering and maintenance to improve public administration in a competitive world, National Politics Publisher, Hanoi.
4. The World Bank (2003), Sustainable development in a world of power, War World Development Report 2003, National Politics Publishing House, Hanoi.
5. Tinh Tinh (2002), Government Reform - political whirlwind late twentieth century, People's Police Publisher, Hanoi.
6. Institute of Political Science, Institute of Political and National Administration HCM (2011), Volume lectures Politics, Politics - Administration Publisher, Hanoi.
7. Alain Vandendorre (2008), the neo sill overlooking the world - China, Singapore and India, Encyclopedias Publisher, Hanoi.  
- In English

1. Machiavch. The Price
2. Max Weber. The Bureaucracy and Politics as a Vocation
3. Charles Lindblom (1959), The Science of Muddling Through
4. Theodore Lowi (1969), The End of Liberalism
5. George Fredrickson (1971), Toward a New Public Administration
6. Jefferey Pressman and Aaron Wildavsky (1973), Implementation
7. Michael Lepsky (1980), Street – leval Bureaucracy
8. Christopher Hood. The Art of State

### **7. Questions:**

- Question before class:

1. What is Politics? What is public policy?
2. What are influences of politics to public policy in Vietnam?
3. What factors does system of political power include?
4. What impact of the ruling party on public policy? Give example.
5. What Impact of the State as a political entity to public policy? Give example.



6. What impact of political organization - society to public policy? Give example.

7. Rights of democracy in the planning and execution of public policy? Give example.

- Discussion questions:

1. What is Politics?
2. What factors does the system of political power include?
3. The impact of the ruling party to public policy?
4. Impact of state as a political entity to public policy? For example.
5. The impact of political organization - society to public policy?
6. The right to democracy in the planning and execution of public policy?

- Review questions:

Question 1: Analyzing the impact of political factors on public policy. Give case study.

Question 2: What factors does the system of political power include?

Question 3: The impact of the ruling party to public policy?

Question 4: The impact of the state as a political entity to public policy?

Question 5: The impact of political organization - society to public policy?

Question 6: The right to democracy in the planning and execution of public policy?

## **8. Forms and schedule of lecture**

- In-class presentations and lecture: 15class hours

- Discussion: 10 class hours

- Exercises: 5 class hours

## **9. Conditions for organizing the course**

- For the Academy: Academy should allocate appropriate classroom system with credit training requirements, have large enough classrooms to teach those subjects under the general knowledge, have matching classroom learning foreign language training, and elective courses. Academy should add reference system, additional titles, enabling students to actively study

and explore related content modules, learning to meet the requirements under the credit regime only.

- Units responsible for teaching should actively amend content modules, system construction ensures advanced training content, updated, modern, and practical science.

- Teachers should own Ph.D. degree, specialized majors or subjects on/close to politics, had been teaching professional Politics Bachelor degree, capable teacher.

- Students obtained ore knowledge. Students need to innovate learning methods and active in the preparation of relevant content to each module.

### **10. The method and forms of evaluation**

- Class participation: 10%

- Mid-term test: 15%

- Homework and discussion: 15%

- Final Exam: 60%

**Head of Lead**  
**Coordinator-Agency**  
(*Sign and Full Name*)

**Science-Training Board (Lead**  
**Coordinator –Agency)**  
(*Sign and Full Name*)

**Compiler**  
(*Sign and Full Name*)

## SYLLABUS

### 1. Information about lecturers

1.1. Full name of the lecturer in charge: Nguyen Thi Hong Hai

Designation: Asso. Prof. Dr.

Address: 77 Nguyen Chi Thanh, Dong Da, Ha Noi

Mobile: ; Email:

1.2. Participating lecturers (full name, address, mobile, email)

- MA/MSc Le Van Hoa

Address: Room 406, Building A, National Academy of Public  
Administration

Mobile:

Email:

- MA/MSc Nguyen Duc Thang

Address: Room 406, Building A, National Academy of Public  
Administration

Mobile:

Email:

- MA/MSc Tran Thanh Nga

Address: Room 406, Building A, National Academy of Public  
Administration

Mobile:

Email:

### 2. General course information

- Course title in Vietnamese: **Quản lý quy trình Chính sách công thông qua nghiên cứu tình huống**
- Course title in English: **Public Policy Process Management with a focus on case studies**
- Course code: number of credits (class/tutorial/self-study): 3
- Area of study/application: public policy
- Level: master Course type: full time

- Course requirement: (*compulsory or selective*)
- Compulsory courses: public policy planning, public policy evaluation
- Pre-studied courses: public policy planning, public policy evaluation
- Parallel courses:
- Other requirements of the course (*if required*):
- Distribution of units for activities:
  - + Lectures: 15 units
  - + Tutorials (doing exercises in class, discussion, practice): 30 units
- Faculty/Program in charge:

### **3. Course objectives**

#### **3.1. General objectives**

- *Knowledge*: + Systematize knowledge related to all stages in a public policy process that students learnt from previous courses, from agenda setting to policy formulation, adoption, and implementation, evaluation; Through which, students can gain a full and comprehensive understanding about public policy process.
  - + Enable students to understand diverse practice of policy process.
- *Skill*: enable students be aware of, to analyze and to solve policy issues. In addition, students will practice teamwork skills through group assignments.
- *Attitude*: enable students to be aware of the importance of research and review of policy stages in a consistent policy process, and to understand the role and implication of all those policy stages in policy process in order to develop positive attitude in development and implementation of public policy.

#### **3.2. Specific objectives about knowledge**

- Obtain the knowledge systematically about all stages in public policy process: agenda setting; policy formulation; policy adoption; policy implementation and policy evaluation.
- Understand fundamental requirements of each stage in policy process. This is the foundation for good policy process management.
- Through case studies, students will (i) understand the practice of stages in policy process in various organizations and sectors; (ii) be able to analyse situations; identify problems and solve problems in association with the stages of policy process.

#### 4. Course summary

Public policy process is divided into stages, from agenda setting to policy formulation, policy adoption and policy implementation and evaluation. Each stage has different characteristics and requirements.

“*Public Policy Process Management Course: from Research to Practice*” Course in the Public Policy Master Program is aimed to provide students with an overview of public policy process in all stages so that students can access public policy systematically; also, students will have more practical knowledge about stages in public policy process; be able to identify, analyse and solve problems in association with different stages of policy process.

#### 5. Detailed course content: the course content is divided into 3 main components as follows:

##### Part 1. Overview of public policy process

##### 1.1. Agenda setting

- 1.1.1. Definition of agenda setting
- 1.1.2. Subject and stakeholders in agenda setting
- 1.1.3. Agenda setting process
- 1.1.4. Challenges and countermeasures

##### 1.2. Policy formulation

- 1.2.1. Definition of policy formulation
- 1.2.2. Subject and stakeholders in policy formulation
- 1.2.3. Policy formulation process
- 1.2.4. Challenges and countermeasures

##### 1.3. Policy adoption

- 1.3.1. Definition of policy adoption
- 1.3.2. Subject and stakeholders in policy adoption
- 1.3.3. Policy approval process
- 1.3.4. Challenges and countermeasures

##### 1.4. Policy implementation

- 1.4.1. Definition of policy implementation
- 1.4.2. Subject and stakeholders in policy implementation
- 1.4.3. Policy implementation process
- 1.4.4. Challenges and countermeasures

##### 1.5. Policy evaluation

- 1.5.1. Definition of policy evaluation
- 1.5.2. Subject and stakeholders in policy evaluation
- 1.5.3. Policy evaluation criteria
- 1.5.4. Challenges and countermeasures

## **PART 2. Analytical framework for policy process management**

### **2.1. Requirement for agenda setting**

A policy proposal must meet the following requirements:

- Clearly define grounds for determining policy issues;
- Policy issues are clearly defined;
- Preliminary analysis of the causes of policy issues;
- Preliminary assessment of socio-economic consequences of a policy issue;
- Recommendation of solutions to problems
- Forecast impacts of each policy option.

### **2.2. Requirements for policy formulation**

Solutions for policy related problems must meet the following requirements:

- Identify the right problem;
- Identify the right causes of the problem;
- Fully and correctly identify the stakeholders who are affected by the problem;
- Fully and correctly identify the consequences caused for the stakeholders and the society;
- Fully review legal documents and related policies;
- Identify all possible policy options;
- Forecast negative and positive impacts of the priority policy solutions;
- Fully consider the feasibility in terms of politics, legislation, finance, administration, technique, and social conditions of each priority policy option.
- Adequately consider the validity, effectiveness and fairness of each priority policy option;
- Collected information must be objective, adequate, comprehensive and timely;
- Full and genuine participation of stakeholders;

- Participants have knowledge and experience about the problems;
- Positive acknowledgement and response to stakeholders' feedback
- Good collaboration between relevant state bodies;
- Appropriate use of technical tools and methods;
- Drafting committee consists of people with knowledge and experience on the problems;
- A list of priority policy options is made.

### **2.3. Requirements for policy adoption**

The reviewing and approving process for a policy proposal must meet the following requirements:

- The approval or verification must be done objectively and scientifically;
- The discussion of a policy proposal must be conducted publicly and transparently;
- The acknowledgement and revision of a policy proposal must be conducted seriously and objectively;
- The review and approval of a policy must be conducted publicly and transparently (except policies related to national secrets);
- Selection of the best policy option (meeting feasibility criteria in terms politics, legislation, technique, finance and administration);
- Policy content must be presented succinctly, simply and understandably;
- Full compliance with the order and procedures in policy adoption process.

### **2.4. Requirements for policy implementation**

Policy implementation process must meet the following requirements:

- Mobilization of all stakeholders to participate in policy implementation process;
- Designed documents, programs and projects do not distort the policy;
- The documents, programs and projects which are to implement the policy fully reflect and concretize the policy content;
- Established framework for monitoring and evaluation of policy implementation results;
- Risks and risk mitigation solutions are identified;
- Use of appropriate methods and tools in designing documents, programs and projects;
- Policy implementing agencies have capacity, high responsibility and pure motives in policy implementation;

- Synchronous collaboration between state agencies and related stakeholders in policy implementation:
  - Budget allocation for policy implementation is adequate and timely;
  - Budget management mechanism ensures savings and efficacy;
  - Monitoring, checking and inspection must be conducted timely, objectively and legally;
  - Regularly maintained leadership, stewardship and urging during policy implementation process.

### **2.5. Requirements for policy evaluation**

Policy evaluation must meet the following requirements:

- A set of indicators to measure major policy results is determined (indicators to measure outputs, outcomes and impacts);
- A set of indicators to measure inputs and activities (input and productivity indicators);
- Indicators are determined appropriately, clearly, fully, economically and accessibly;
- Appropriate and effective evaluation methods are selection;
- Selected methods of collecting and processing information are relevant and consistent with methods applied in policy formation;
- Policy evaluation is conducted independently, objectively and scientifically;
- Relevant stakeholders are consulted and participate in evaluation
- Policy results are assessable;
- Causes of success and failure, of achievements and drawbacks are explicable;
- Lessons and recommendations are drawn to improve policies in future;
- Evaluation report is presented in succinct, simply, easy-to-read and easy-to-understand manner.

### **PART 3. Case studies**

- The course uses 5 real life case studies including: two case studies in Vietnam; 2 case studies in Japan; 1 comparative research case in some other countries.

In addition, students are encouraged to share case studies from their work practice.

- Each case study consists of
  - Case description



- Questions for discussion

## 6. Learning materials (*textbooks, lectures, reference materials*)

### *Core textbooks*

- Nguyen Huu Hai, Editor (2002) Public Policy Planning and Analysis Textbook, NAPA, Statistics Publishing House, Ha Noi
- Le Chi Mai (2000), Policy and Policy Cycle, National Politic Publishing House, Ha Noi
- Shiroyama Hideaki (1998), the Process of Policy Formulation in Central Ministries. Translated from Japanese. (Internal circulation)
- Thomas R. Dye, Understanding Public Policy, 14<sup>th</sup> Edition. Translated from English. (Internal circulation)

### *Reference materials*

- Le Vinh Danh (2001), Public Policy of the U.S, National Politic Publishing House, Ha Noi
- Do Hoang Toan (1997), Policy in Socio-Economic Management, Scientific & Technical Publishing House, Ha Noi.

## 7. Teaching & learning methodology

This course focuses on case studies through which students can acquire not only theoretical knowledge but also practical knowledge in public policy and policy process. The course applies active, student-centered teaching methods. Lecturers play guiding role while students actively identify, analyze and propose solutions to problems in policy process.

## 8. Test and assessment of study results

Final score is based on the following components:

- *Class attendance (30%)*: score is calculated on student's attendance and their active participation in class
- *Final term assignment (70%)*: there are 2 essay options
  - + Students are given a case study and requested to analyze that case in responding to the given questions by lecturer.
  - + Students choose one real life case study and analyze the factors that affect the results and contribute to the success or failure of the policy in that case, from which draw lessons learnt or give recommendations.

## 科目「公共政策プロセスにおけるステークホルダー分析」

### 1. 教員情報

科目担当教員氏名： ディン・ティ・ミン・トゥエット (Dinh Thi Minh Tuyet)

役職・職位・学位： 准教授・博士・担当教員

勤務時間・場所：

連絡先住所： 国家行政学院 社会関連国家管理学科

電話：

E-mail：

参加教員情報（氏名・連絡先住所・電話・e-mail）：

－ タ・ティ・フオン (Ta Thi Huong) 国家行政学院社会関連国家管理学科院生、電話：  
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－ ダン・ティ・ミン (Dang Thi Minh) 博士 国家行政学院社会関連国家管理学科、電話：  
、

### 2. 科目概要

－ 科目名： 公共政策プロセスにおけるステークホルダー分析

－ 英語名： Stakeholder Analysis in the public policy process

－ 科目コード：

－ 単位数（出席・実習・自己研究）： 03 単位

－ 対象となる専門分野： 公共政策、授業レベル： 修士、授業形式： 正規

－ 科目の種類： 選択

－ 基礎必修科目： 公共政策入門

- 先修科目：

同科目は、以下のような科目を学んだ学生向けに設定されている。

公共政策入門

公共政策策定

政策評価

政策プロセス管理

- 同時受講する科目：

- 科目に対するその他の条件（あれば）：

- 授業の方法と時間配分：03 単位

+ 理論講義の受講： 30 コマ

+ 授業時間内に行う課題：10 コマ

+ ディスカッション： 10 コマ

+ 実習： 10 コマ

+ グループワーク： 10 コマ

+ 自己学習： 10 コマ

- 科目担当部門・学科：社会関連国家管理学科

### 3. 科目の目標

#### 3.1. 科目の全体目標

- 知識：

下記の内容を提供することにより、公共政策プロセスの各段階での合意分析やステークホルダー分析における交渉理論の基本的な知識を学生が身につける。

- 交渉・合意・ステークホルダー及びステークホルダーの関与度・権限に関する基礎概念
- 公共政策プロセスにおけるステークホルダー分析・評価の各ステップ
- 公共政策プロセスにおけるステークホルダー分析・評価の基本内容
- 公共政策プロセスにおけるステークホルダーの関与度の分析・評価プロセスに適用するツール

- **技能：**

- 合意分析における交渉技能を明確化できる
- 政策およびステークホルダーの問題を分析し特定できる
- 公共政策プロセスにおけるステークホルダー及びステークホルダーの影響度を特定できる
- 公共政策プロセスにおけるステークホルダー分析のために適切なツールを適用することができる

- **態度：**

- 経済・社会生活の中で発生する政策問題のステークホルダーの関与について、関心を持ち理解する
- 政策の策定と実施に関するステークホルダー分析に、適切なプロセスと科学的分析手法・ツールを意識して適用する
- 公共政策の策定と実施におけるステークホルダーの関与を保障するために政策決定の権限を持つ主体の論証・説得に関心を持つ

**3.2. 科目の知識に関する具体的な教育目標（各章・問題毎に重要事項のみ記載）**

学習者が交渉理論や各概念の体系、ステークホルダーの役割と関与度、ステークホルダー分析の必要性について明確に把握できるようサポートする。

公共政策プロセスにおける関与主体の権限や責任を明確化できる。

分析のための方法やツール・技術と同様、政策プロセスの各段階におけるステークホルダー分析のプロセス若しくは各ステップを描写できる。

公共政策プロセスにおけるステークホルダーの関与の評価目的・要求・基準・内容を明確化できる。

#### 4. 科目内容の要旨

科目「公共政策プロセスにおけるステークホルダー分析」の内容は、交渉理論・ステークホルダー分析の基本内容を含み、4つの章から構成される。

第1章では、合意分析における交渉理論を総括し、観点と利益の概念・合意と交渉・交渉の基本技術といった内容を含む。

第2章では、政策プロセスにおけるステークホルダーの概要を扱い、ステークホルダーの概念・分類、ステークホルダー関与の役割、政策プロセスにおけるステークホルダーの関与度や関与原則といった内容を含む。

第3章では、政策プロセスにおけるステークホルダーの分析を行い、政策プロセスにおけるステークホルダー分析の概念と必要性、政策プロセスの各段階におけるステークホルダーの関与度、ステークホルダー分析の各ステップでのプロセス、ステークホルダー分析において使用される各手法といった内容を含む。

第4章では、政策プロセスにおけるステークホルダー関与を評価し、評価の目的と要求、ステークホルダーの重要性・与える影響の評価と評価方法に関する基本内容を含む。

#### 5. 科目の詳細内容

## 第1章

### 合意分析における交渉理論

#### 1.1. 観点と利益に関する概念

#### 1.2. 合意と交渉

##### 1.2.1. 合意

- BATNA,
- ZOPA

##### 1.2.2. 交渉

- 概念
- 交渉の原則
- 交渉の動機

#### 1.3. 交渉の基本技術

- + 単独の問題に対する交渉技術
- + 複数の問題に対する交渉技術

## 第2章

### 公共政策プロセスにおけるステークホルダー

#### 2.1. 公共政策プロセスにおけるステークホルダーの概要

##### 2.1.1. 公共政策プロセス

公共政策プロセスには多くの異なるアプローチ法があり、4ステップのプロセスが適用される

##### 2.1.1.1. 政策問題の確定

#### 2.1.1.2. 政策の策定

#### 2.1.1.3. 政策の実施

#### 2.1.1.4. 政策の評価

ステークホルダー分析は各ステップそれぞれと結びついていることから、プロセス全体を分析はしない。非公式なプロセスや周辺活動もあることから、政策プロセスにおけるあらゆるステップでステークホルダー分析をするわけではない。

ステークホルダー分析は、本当に必要と判断した際にのみ実施するものであり、政策プロセスの各ステップで必ずやらなければならない作業とは異なる。

### 2.1.2. ステークホルダーの概念と分類

#### 2.1.2.1. ステークホルダーの概念

互いに集合したグループであり、利害面での繋がりを持つ

#### 2.1.2.2. ステークホルダーの分類

- ステークホルダーの特徴に基づいて
- ステークホルダーの影響及びその度合いに基づいて
- ステークホルダーのインパクト・影響の性質に基づいて

### 2.2. ステークホルダーの関与

#### 2.2.1. ステークホルダー関与の概念

#### 2.2.2. ステークホルダー関与の役割

2.2.2.1. 政策の発展と実現に向けた多くのアイデアを創出する

2.2.2.2. 多様な観点を集結できる

2.2.2.3. 多くの支援や努力を集結できる

2.2.2.4. 関与の際、声をあげる機会や公正さを創出できる

2.2.2.5. 起こりうる問題の障壁を回避するようサポートする

2.2.2.6. 反対がある場合、主体組織の地位強化をサポートする

2.2.2.7. コミュニティに社会資本が集結するようサポートする

2.2.2.8. 主体組織の威信を高める

2.2.2.9. 政策成功の機会を増やす

### **2.2.3. ステークホルダーの関与度**

2.2.3.1. 情報提供をする

2.2.3.2. 参考意見を出す

2.2.3.3. パートナーの立場で

2.2.3.4. チェックを行う

### **2.2.4. ステークホルダーの関与原則**

2.2.4.1. 各ステークホルダー間での理解・尊重

2.2.4.2. 全面性

2.2.4.3. 明確性

2.2.4.4. 責任と説明責任

2.2.4.5. 各ステークホルダーの自主権の保障

## **第3章**

### **公共政策プロセスにおけるステークホルダー関与分析**

#### **3.1. ステークホルダー分析の概念**

- ▶ ステークホルダーが誰かを特定するプロセスであり、
- ▶ 彼らの交渉・議論の場を設定する

#### **3.2. ステークホルダー分析の必要性和目的**

3.2.1. ステークホルダーの関心の特定



3.2.2. ステークホルダーの特徴と関与能力の特定と明確化

3.2.3. ステークホルダー間の関係理解と評価

3.2.4. ステークホルダーとの連携関係の建設

3.2.5. ステークホルダーの適切な関与方法の評価

### 3.3. 公共政策プロセスにおけるステークホルダー分析の各ステップ

#### 共編の概説書に基づく

3.3.1. プロセスの計画作成 (Planning Process)

3.3.2. 1つの政策の選択と特定

3.3.3. 主要ステークホルダーの特定

3.3.4. 適切なツールの選択 (adapting the tools)

3.3.5. 情報の収集と記録

3.3.6. ステークホルダー表・マトリックスへの記入

3.3.7. ステークホルダー表・マトリックスの分析

3.3.8. 分析情報の使用

#### 松浦教授の示唆による (4ステップ)

3.3.1. 準備

3.3.2. インタビュー

3.3.3. 分析

3.3.4. 報告

### 3.4. 政策プロセスにおけるステークホルダー分析

3.4.1. 政策問題特定におけるステークホルダー分析

3.4.2. 政策策定におけるステークホルダー分析

- 3.4.3. 政策実施におけるステークホルダー分析
- 2.4.4. 政策評価におけるステークホルダー分析
- 3.5. ステークホルダー関与分析のツール・技術
- 3.5.1. SWOT ツール・技術
- 3.5.2. 問題分析樹形図ツール・技術

## 第4章

### 公共政策プロセスにおけるステークホルダー参与評価

- 4.1. ステークホルダー参与評価の目的・要求・対象
  - 4.1.1. ステークホルダー参与評価の目的
  - 4.1.2. ステークホルダー参与評価の要求
  - 4.1.3. ステークホルダー参与評価の対象
- 4.2. ステークホルダー参与評価の指標と内容
  - 4.2.1. ステークホルダーの利益
  - 4.2.2. ステークホルダーの権力 (主催・関与・受益)
  - 4.2.3. ステークホルダーの関心と主体性
  - 4.2.4. ステークホルダーの齟齬・矛盾のチェック
  - 4.2.5. ステークホルダーの相互作用 (度合い・関与形式)
- 4.3. 公共政策プロセスにおけるステークホルダー評価の各ステップ
- 4.4. ステークホルダー関与評価のツール・技術
  - 4.3.1. ステークホルダーのチェック・評価計画

4.3.2. 魚の骨モデルによる分析

4.3.3. 結果による分析

#### 4.5. 政策プロセスにおけるステークホルダー関与の評価内容

4.5.1. 政策問題特定におけるステークホルダー関与の評価

4.5.2. 政策策定におけるステークホルダー関与の評価

4.5.3. 政策実施におけるステークホルダー関与の評価

4.5.4. 政策評価におけるステークホルダー関与の評価

#### 6. 学習資料（教科書、講義、参考資料）

- 『公共政策-基本問題-』 国家政治出版社、2014年
- 『公共政策分析概説』 国家政治出版社、2013年
- 『国家行政学院の公共政策策定・分析テキストブック』、2002年
- Donaldson, T. and Preston, L. 1995. *The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications*. In *The Academy of Management Review*, 20(1), 65-91;
- Jawahar, I.M. and McLaughlin, G.L. 2001. *Toward a Descriptive Stakeholder Theory: An Organizational Life Cycle Approach*. In *The Academy of Management Review*, 26(3), 397-414;
- Kahn, J. 2004. *Local Politics of Renewable Energy, Project Planning, Siting Conflicts and Citizen Participation*, Environmental and Energy Systems Studies, Lund University;
- Mitchell, R.K. Bradley, R.A. and Wood, D.J. 1997. *Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What really Counts*. In *The Academy of Management Review*, 22(4), 853-885;
- Olander, S. 2003. *External Stakeholder Management in the Construction Process*, Division of Construction Management, Lund University;

- Olander, S. and Landin, A. 2005. Evaluation of Stakeholder Influence in the Implementation of Construction Projects. *International Journal of Project Management*, 23(4), 321-328;
- Sternberg, E. 1997. *The Defects of Stakeholder Theory*. In *Corporate Governance: An International Review*, 5(1), 3-9;
- Winch, G. and Bonke, S. 2002. *Project Stakeholder Mapping: Analysing the interests of Project Stakeholders*, Chapter 23 in Slevin, D.P. Cleland, D. I. and Pinto, J.K. (eds), *The Frontiers of Project Management Research*. Project Management Institute Inc;
- Section 8. Identifying and Analyzing Stakeholders and Their Interests, Chapter 7, <http://ctb.ku.edu/en/table-of-contents/participation/encouraging-involvement/identify-stakeholders/main>

#### - その他の参考資料

GRIPS 高田寛文教授の講義

「付録A：ステークホルダーの関与」、『プロジェクト TA7629-VIE、河川流域水資源開発能力強化』

ジュネーブ国際赤十字・赤新月社『計画・プログラム作成マニュアル』、2010年

UNAIDS『ステークホルダーの十分な関与プラクティス 2011- HIV 予防生物医学実験マニュアル』

### 7. 授業実施形態

- 座学と実習を組み合わせる
- 個人及びグループで課題に取り組む

### 8. 試験手法・形式-科目学習成果の評価

#### 8.1. 授業実施手法

ブレインストーミング、講義、グループディスカッション、ケーススタディ、ロールプレイといった手法を柔軟に組み合わせる。

#### 8.2. 試験・評価手法

- 科目終了時に下記の点数を総合する。
  - + 態度・熱心さ：10%
  - + クラスでのディスカッション参加点：10%
  - + 課題実施点：30%
  - + 期末試験：50%
- 採点評価基準：10点満点

## 科目「法律と公共政策」

### シラバス

#### 1. 教員情報

a. 科目担当教員氏名：レ・ティエン・フオン (*Le Thien Huong*)

役職・職位・学位：准教授、博士

勤務時間・場所：国家行政学院 国家と法律学科

連絡先住所：国家行政学院 国家と法律学科

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b. 参加教員情報：

- ルオン・タイン・クオン (*Luong Thanh Cuong*)

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電話：                      、email:

- グエン・クオック・スー (*Nguyen Quoc Suu*)

役職・職位・学位：准教授、博士

連絡先住所：国家行政学院 国家と法律学科

電話：                      、email:

- チャン・ティ・ジェウ・オアイン (*Tran Thi Dieu Oanh*)

役職・職位・学位：博士

連絡先住所：国家行政学院 国家と法律学科

電話：                      ; email:

- フイン・ヴァン・トイ (*Huynh Van Thoi*)

役職・職位・学位：博士

連絡先住所：国家行政学院事務局 ホーチミン市キャンパス

電話：                      、email:

#### 2. 科目概要

- 科目名：法律と公共政策

- 英語名：LAW AND PUBLIC POLICY

- 科目コード :
- 単位数 (出席/実習/自己研究) :
- 対象となる専門分野 : 公共政策、授業レベル : 大学院レベル、授業形式 : 正規・集中

- 科目の種類 : (必修又は選択)
- 基礎必修科目 :
- 先修科目 :
- 同時受講する科目 :
- 科目に対するその他の条件 (あれば) :

学生は必ず薦めのあった文章資料や講義テキスト、法律文書を事前に読み、クラスでのディスカッションや研究グループに参加することが求められる。

- 授業の方法と時間配分
  - + 理論講義の受講 : 20 コマ
  - + 課題 :
  - + ディスカッション : 10 コマ
  - + 実習 :
  - + グループワーク :
  - + 自己学習 :
- 科目担当学科 : 国家行政学院 行政学部 国家と法律学科

### 3. 科目の目標

#### 3.1. 科目の全体目標

##### 知識 :

同科目終了時、学生は下記に関してより高い知識を修得することが期待される。

- 公共政策との関係における法律体系の役割の明確化
- 政策の策定・作成過程及び法律策定過程への理解
- 上記2つの過程の関係 (区別) の指摘

##### 技能 :

- 法律・公共政策における法律の役割・法律の作成と公布過程の分析・明確化する能力を養成する。
- 政策策定や法律作成グループに参加する能力を持つ。

##### 態度 :

実際の活動や科学研究において、公共政策と法律との関係に関する知識や方法論を理解し、自信を持って正しく活用する。

### 3.2. 科目の知識に関する具体的な目標

授業では、各章毎に以下の具体的な教育目標を消化する：

- 法律と公共政策の全体像
- 国家活動における法律と公共政策の関係。その中では憲法が公共政策の作成と実施における法的な基盤と見なされる。
- 立法過程及び法律評価

### 4. 科目内容の概要

授業「法律と公共政策」では次の内容に言及する。i) 法律に関する基礎的な事項（法律の概念・本質・機能、社会発展に対する法律の役割、法律の起源）、ii) 法律と公共政策の関係（法律に対する公共政策のインパクト、法律と公共政策の実施、法律と公共政策の区別）、iii) 立法過程と法律の評価。

講義・クラスディスカッションへの参加といった授業形式を通じ、科目修了後、学生は公共政策との関係における法律体系の役割を明確化し、また政策策定・作成過程と法律作成過程を区別し、そこから公共政策作成・法律の公布・或いはこの2つの範疇に関する科学研究に対し、より効果的に活用する方法を導き出すことができる。

### 5. 科目の詳細内容

科目の、各章・節・項若しくは主要な問題毎の詳細内容を下記に列記する。

## 第1章

### 法律の全体像

#### 1.1. 法律の概要

##### 1.1.1. 法律の概念

##### 1.1.2. 本質、機能

##### 1.1.3. 法律規范文書体系

#### 1.2. 社会の発展における法律の役割

##### 1.2.1. 法律は社会の発展方向を規定する

##### 1.2.2. 法律は人間価値の発展における法的基礎を作る



1. 2. 3. 法律は社会発展を保護する

### 1. 3. 法源

1. 3. 1. 直接的法源

- 慣習法
- 前例法
- 法律規范文書

1. 3. 2. 間接的法源

- 政治・法に関する思想・学説
- 道徳
- その他の法源

### 1. 4. 世界の各法律体系

- 1. 4. 1. 英米の法律体系(Common Law)
- 1. 4. 2. 大陸ヨーロッパの法律体系 (Continental Law)
- 1. 4. 3. イスラムの法律体系(Islamic/ Muslim Law)

## 第2章

### 法律と公共政策の関係

#### 2. 1. 公共政策の法律へのインパクト

- 2. 1. 1. 公共政策は法律修正の目標と原則の基盤
- 2. 1. 2. 公共政策は法律の修正内容を方向付ける
- 2. 1. 3. 公共政策は立法過程を方向付ける
- 2. 1. 4. 公共政策は法律の実施を方向付ける
- 2. 1. 5. 公共政策は法律の評価を方向付ける

#### 2. 2. 法律と公共政策実施

- 2. 2. 1. 法律は公共政策を表現する形式である
- 2. 2. 3. 法律は公共政策を実施するための法的根拠である
- 2. 2. 4. 法律は公共政策の評価・チェックのための法的根拠である

#### 2. 3. 公共政策の法的基盤である憲法

- 2. 4. 1. 憲法に関する観念

- 2. 4. 2. 公共政策決定主体である人民
- 2. 4. 3. 憲法の基本内容
- 2. 4. 4. 憲法の保護
- 2. 4. 法律と公共政策の区別**
- 2. 1. 1. 公共政策の表現形式
- 2. 1. 2. 法律と公共政策を区別する各指標
  - 公布主体
  - 公布過程
  - 目的
  - 実施を担保する仕組み
  - その他の指標

### 第3章

#### 立法過程と法律評価

- 3. 1. 立法過程
  - 3. 1. 1. 立法の構想
  - 3. 1. 2. 立法計画作成（優先事項の確立）
  - 3. 1. 3. 法律の起草と公布
    - 法律作成と公布の原則（客観的原則、人間の権利・公民権の尊重・保障の原則、民主原則、法制度の原則、指導政党の原則）
    - 修正対象及び修正方法の選択
    - 法律の作成・公布過程（2015年法律規範文書公布法に基づく）
- 3. 2. 法律の効力・効果の評価**
- 3. 1. 1. 法律の効力・効果の評価内容
  - 合憲性・合法性の評価
  - 一貫性の評価
  - 実現性・実情との適合性に関する評価
  - 実施コストと得られる成果に関する評価
  - 国民の満足度に関する評価

3. 1. 2. 法律の効力・効果の評価主体

- 国家
- 法的文書のインパクトを受ける対象
- 国民
- 経済組織・社会組織・非政府組織等

6. 学習資料 (教科書、講義、参考資料)

6. 1. 必読資料

- 国家行政学院『国家と法律に関する理論テキストブック』科学技術出版社、2010年、ハノイ
- 国家行政学院『憲法・国家組織機構法テキストブック』科学技術出版社、2010年、ハノイ
- 国家行政学院『行政法テキストブック』科学技術出版社、2010年、ハノイ
- ファム・ズイ・ギア (Pham Duy Nghia) 『法律大綱テキストブック』人民公安出版社、2011年、ハノイ
- グエン・ヒュー・ハイ (Nguyen Huu Hai)、レ・ヴァン・ホア (Le Van Hoa) 共編『公共政策大綱』国家政治出版社、ハノイ
- Barry R Weingast (Stanford University) 2010, Why Developing Countries Prove So Resistant to the Rule of Law, in James J. Heckman, Robert L. Nelson, Lee Cabatingan, Global Perspectives on the Rule of Law. (New York: RoutledgeCavendish, 2010) - 翻訳版あり\*
- Pistor and Wellons, The role of law and legal institutions in Asian economic development 1960-1995, ADB Executive Summary, HIID 1998, Oxford University Press 1999 \*
- Ann Seidman et al, Assessing a bill in terms of public interest, in WB: Law & Justice for Development, 2003 (ベトナム語版 Ann Seidman『法律案件の評価: 立法者向けハンドブック』国家政治出版社、2004年、ハノイ)
- Truong Thien Thu, Ranjith Perera, Intermediate levels of property rights and the emerging housing market in HCM City, Vietnam, Land Use Policy 28 (2010) 124-138 - 翻訳版あり\*
- 援助ドナーコミュニティ『ベトナム開発レポート2010: 現体制』

- Tom Ginsburg, *Judicial Independence in East Asia: Lessons for China*, in Randall Peerenboon, *Judicial Independence in China*, Cambridge University Press 2010, pp 247-259 - 翻訳版あり\*

- Randall Peerenboon 『中国における裁判所管理研究報告』 UNDP 司法改革指導委員会、2011年(未公開資料) - E/V

- 法律文書

- 1946年、1959年、1980年、1992年、2013年版ベトナム憲法

- 国会組織法(2014年)、政府組織法(2015年)、地方政府組織法(2015年)、法律規范文書公布法(2015年)

## 6.2. その他各参考資料

- タイ・ヴィン・タン (Thai Vinh Thang) 「1945年8月革命以前のベトナムにおける立憲思想」、『法律研究』2011年11月号

- 『皆のための法律』第1巻、UNDP、2011年

- ハノイ国家大学法学部『憲法法テキストブック』2013年

- ハノイ国家大学法学部『行政法テキストブック』2013年

- ホアン・ティ・キム・クエ (Hoang Thi Kim Que)、ハノイ国家大学法学部『国家と法律に関する理論テキストブック』ハノイ国家大学出版社、2007年

- グエン・ミン・ドアン (Nguyen Minh Doan) 『国家と法律に関する理論テキストブック』国家政治出版社、ハノイ、2010年

- グエン・ヴァン・ドン (Nguyen Van Dong) 『国家と法律に関する理論テキストブック(法学部生及び法学大学院生教育向け)』国家政治出版社、ハノイ、2014年

- ハノイ国家大学法学部『海外行政法』ハノイ国家大学出版社、ハノイ、2011年

- ハノイ国家大学法学部『ベトナムの国家管理における分権・実情と展望』人民公安出版社、2011年

- ダオ・チー・ウック (Dao Tri Uc) 教授・科学博士、 ヴー・コン・ザオ (Vu Cong Giao) 博士(ベトナム語版共編) 『地方レベルにおける民主』ハノイ国家大学出版社、ハノイ、2014年

- ホーチミン国家政治学院政治家学院『政治学テキストブック』2003年、ハノイ

- ハノイ国家大学法学部『政治学説の歴史テキストブック』ハノイ国家大学、2009年
- ハノイ国家大学法学部『人間の権利に関する理論と法律テキストブック』国家政治出版社、2009年
- ヴー・ヴァン・ホア (Vu Van Hoa)、ディン・スアン・ハン (Dinh Xuan Hang) 『貨幣理論テキストブック』財政出版社、2007年
- 財政学院『貨幣テキストブック』財務出版社、2011年
- 財政学院『税テキストブック』財務出版社、2011年
- Zemans, Frances Zahn. 1983 “Legal Mobilization: The Neglected Role of the Law in the Political System.” American Political Science Review 77: 690-702.
- Scheingold, Stuart A. 2004. The Politics of Rights: Lawyers, Public Policy, and Political Change. Ann Arbor: University of Michigan Press - Part One
- OECD 2005, Guidelines on Corporate Governance of State Owned Enterprises
- OECD 2007, Building a Framework for Conducting RIA, Tools for PolicyMakers.
- UNDP and VN Supreme Court, (Bath and Biddulph), Research Studies on the Organization and Function of the Justice System in Five Selected Countries, 2010.
- Martine Lombard - Gilles Dumont 『フランス共和国の行政法』司法出版社、2007年
- 政策・法律・開発研究院『法律・法令作成過程評価研究報告、実情と解決策』労働社会出版社、2008年
- 『セミナー紀要：法治国家における国会の監督機能』労働出版社、2011年
- チャン・クオック・ビン (Tran Quoc Binh) 『ベトナムの立法過程における政府の役割』国家政治出版社、2013年
- Dêvít ÂuBót, Tét Gheblor 『政府活動刷新 - 企業精神は公共セクターをどのように変化させてきたか』国家政治出版社、1997年

- ベトナム政府、国連開発プログラム『中央政府と省政府の管轄権分離規定に関するセミナー紀要：実情と諸問題』2013年
- UNDP『ベトナム行政改革、実情と解決策』国家政治出版、2009年
- Noccolò Machiavelli『君王』社会労働出版社、2012年
- Aristotle (ノン・ズイ・チュオン(Nong Duy Truong)翻訳・注記)『政治論』世界出版社、2013年
- Michel Fromont『世界の基本法律体系』司法出版社、2009年
- WGI:<http://info.worldbank.org/governance/wgi/index.asp>
- 法的文書出典：[www.chinhphu.vn](http://www.chinhphu.vn) (文書管理システム) 若しくは国会ベトナム法律データベース:<http://vietlaw.gov.vn/LAWNET/>
- 立法研究誌：<http://www.nclp.org.vn/>
- 法律草案：<http://duthaonline.quochoi.vn/>、[www.vibonline.com.vn](http://www.vibonline.com.vn)
- 右記ウェブサイト上論文：[nghienquocute.net](http://nghienquocute.net)
- 右記ウェブサイト上論文：[thongtinphapluatdansu.info](http://thongtinphapluatdansu.info)
- 統計総局ウェブサイト：  
<http://www.gso.gov.vn/default.aspx?tabid=386&idmid=3&ItemID=14154>

## 7. 授業実施形態

番号	授業実施形態			計 (コマ)
	講義			
	理論 (コマ)	課題 (コマ)	セミナー (コマ)	
1	4	0	2	6
2	8	0	4	12
3	8	0	4	12
計	20	0	10	30

## 8. 試験手法・形式- 科目学習成果の評価

番号	評価形式	比重
1	科目中間試験	30%
2	科目修了試験	70%

## SYLLABUS

### 1. Instructors Biography

- Course Director: Nguyen Hoang Hien
- Degree: PhD
- Organization: Faculty of State Management on Economic affairs, National Academy of Public Administration
- Contact address: Room 324, Building A, National Academy of Public Administration, 77 Nguyen Chi Thanh, Hanoi
- Telephone: \_\_\_\_\_ Email address: \_\_\_\_\_
- Instructors' Contact information:

Name	Address	Telephone	Email address
Luong Minh Viet			
Dang Dinh Thanh			
Nguyen Hong Trang			

### 2. Course information

- Course Name: Economics and Public Policy
- Course Number: \_\_\_\_\_ Credits: 3
- Applied for program: Public policy Educational level: Master
- Mode of study : Fulltime
- Course requirement: (*Required or Optional*): Required
- Prerequisites: None
- Other requirements: To take this course, students are required to take basic courses of macro-economics and micro-economics in undergraduate or pre-master programs.
- Time allocation for activities:
  - + Lectures: 26 periods
  - + Exercises: 0 periods
  - + Discussions: 13 periods
  - + Practices : 6 periods

- + Team work: 0
- + Self-study: 0 periods

- Courses offered by: Faculty of State Management on Economic affairs

### 3. Learning Objectives

#### 3.1. General Objectives

- Knowledge:
  - + Understand basic concepts, principles and laws in economics
- Skills:
  - + Applied what have been learnt to analyze and evaluate public policies
  - + Use knowledge of economics for the course of cost and benefit analysis
- Attitude
  - + Be Aware of the fact that economics is a very complicated and technical subject.

As learners are expected to become managers in the future; therefore they do not need to be an expert in economics and also it is impossible for them to become an expert only after learning one course. However, during the policy process, they need advices from top economic consultants.

#### 3.2. Specific objectives

Section	Topic	Objectives
<b>Section 1: Introduction</b>	Chapter 1: Introduction to economics	- Understand basic economic concepts.
<b>Section 2: Microeconomics for managers</b>	Chapter 2: Applications of supply and demand model into public policy process	- Understand basic concepts: demand, supply, market equilibrium, supply elasticity, demand elasticity. Using such knowledge to analyze effects of particular public policies on markets.
	Chapter 3: Production costs and Profit maximization	- Understand cost concepts such as: fixed cost, variable



		<p>cost, marginal cost, average cost, long-run cost, short-run cost, Profit Maximizing Rule and use these concepts to analyze production decisions made by a firm.</p>
	<p>Chapter 4: Competition, monopoly and roles of government</p>	<p>- Understand two extreme cases of market structure: perfect competition and monopoly; explain how monopoly creates a deadweight loss and why the intervention of Government in a market is necessary.</p>
<p><b>Section 3: Macroeconomics for managers</b></p>	<p>Chapter 5: Economic growth and inflation</p>	<p>- Understand basic concepts related to growth and inflation, especially which factors affect long-run growth and inflation.</p>
	<p>Chapter 6: Fiscal and Monetary policies</p>	<p>Understand basic concepts related to Fiscal and Monetary policies such as tools can be used under such policies and analyze these two policies through IS-LM model in the small and opened economy.</p>

#### 4. Course description

Economics and Public policy is a required course in the Master Program of Public Policy offered by National Academy of Public Administration. Content includes basic concepts and principles such as: demand, production, cost, pricing, and cost-and-benefit

analysis. In addition to basic knowledge of economics, this course also discusses some specific topics related to the process of public policy decision-making such as efficiency, market loss, and roles of Government. Last but not least, the course explains why economic approach is important to the process of public policy making.

## 5. Course outline

### SECTION 1: INTRODUCTION

#### CHAPTER 1: INTRODUCTION TO ECONOMICS

##### *1.1. Basic concepts in economics*

1.1.1. Definition of economics

1.1.2. Three basic economic questions

- *What to produce?*
- *How to produce?*
- *For whom to produce?*

1.1.3. Production Possibility Frontier

1.1.4. Opportunity cost

##### *1.2. Specialization and trade*

1.2.1. Absolute advantage

1.2.2. Comparative advantage

##### *1.3. Economic systems*

1.2.1. Command economy

1.2.2. Market economy

- *Free market economy*
- *Mixed economy*

### SECTION 2: MICROECONOMIC FOR MANAGERS

#### CHAPTER 2: APPLICATIONS OF SUPPLY AND DEMAND MODEL TO PUBLIC POLICY PROCESS

##### *2.1. Supply-Demand model and market equilibrium*

2.1.1 Supply

2.1.2. Demand

2.1.3. Market equilibrium and changes in market equilibrium

## **2.2. Supply and Demand elasticity**

2.2.1. Elasticity of demand

- *Price elasticity of demand*
- *Income elasticity of demand*
- *Cross elasticity of demand*

2.2.2. Elasticity of supply

## **2.3. Examples of Application of supply-demand model in public policy process**

### **CHAPTER 3: PRODUCTION COSTS AND PROFIT MAXIMIZATION**

#### **3.1. Production cost theory**

3.1.1. Concepts and meaning

- *Fixed cost*
- *Variable*
- *Marginal cost*
- *Average cost*
- *Total cost*

3.1.2. Short-run cost vs. long-run cost

3.1.3. Accounting cost vs. economic cost

#### **3.2. Profit theory**

3.2.1. Definition and meaning

3.2.2. Accounting profit vs. economic profit

3.2.3. Profit maximization

### **CHAPTER 4: COMPETITION, MONOPOLY AND ROLES OF GOVERNMENT**

#### **4.1. Perfectly competitive market**

4.1.1. Characteristics of perfectly competitive market

4.1.2. Price, Quantity and profit in perfectly competitive market

4.1.3. Consumer surplus, producer surplus and social welfare

4.1.4. Pareto efficiency and Pareto improvement

#### **4.2. Monopoly**

- 4.2.1. Characteristics of Monopolized market
- 4.2.2. Price, Quantity and Profit in Monopolized market
- 4.2.3. Deadweight loss in monopolized market

#### **4.3. Government Intervention**

- 4.3.1. Why Governments should intervene in markets
- 4.3.2. Forms of Government intervention

### **SECTION 3: MACROECONOMIC FOR MANAGERS**

#### **CHAPTER 5: ECONOMIC GROWTH AND INFLATION**

##### **5.1. Economic growth**

- 5.1.1. Economic growth and Factors affecting economic growth
- 5.1.2. Economic indicators
- 5.1.3. Short-term changes in the economy and long-run economic growth

##### **5.2. Money and Inflation**

- 5.2.1. Money
- 5.2.2. Inflation theories

#### **CHAPTER 6: FISCAL AND MONETARY POLICIES**

##### **6.1 Fiscal policy and IS curve**

##### **6.2. Monetary policy and LM curve**

##### **6.3 Policy analysis by using IS-LM model in a small , opened economy**

#### **6. Textbooks**

##### **- Required:**

- + Economics and Public Policy, National Academy of Public Administration
- + Mankiw, N.G. (2003). Principles of Economics (Translated versions), Statistical

Publishing House

##### **- References**

#### **DANH MỤC TÀI LIỆU THAM KHẢO**

Vietnamese materials

1. Bộ giáo dục và Đào tạo, Kinh tế học vĩ mô, NXB Giáo dục, Hà Nội, 2008
2. Bộ giáo dục và Đào tạo, Kinh tế học vi mô, NXB Giáo dục, Hà Nội 2005
3. Nguyễn Văn Công, Nguyên lý kinh tế học vĩ mô, NXB Lao động – Xã hội, 2006
4. Phan Thế Công, Ninh Hoàng Lan, Bài tập và Hướng dẫn phương pháp giải Kinh tế học vi mô I, Nhà xuất bản thương mại, 2011
5. Nguyễn Văn Dân, Kinh tế học vi mô, Nhà xuất bản tài chính, Hà Nội, 2009
6. Nguyễn Văn Ngọc, Bài giảng kinh tế vĩ mô, NXB Đại học Kinh tế Quốc dân, Hà Nội, 2013
7. Hoàng Thị Tuyết và Đỗ Phi Hoài, Kinh tế học vi mô – Lý thuyết và thực hành, NXB Tài chính, 2004
8. Michael P. Todaro, Kinh tế học cho thế giới thứ ba (bản dịch), NXB Giáo dục, 1998

#### English materials

1. Arnold, R.A. Macroeconomics (10<sup>th</sup> edition), Cengage Learning, 2010
2. Bentick, T.G. & Spencer, D.E., Economics: Study Guide, Addison –Wesley Publishing Company, 1992
3. Christopher, R.T. & S. Charles, Managerial Economics (8<sup>th</sup> edition), McGraw-Hill, 2005
4. David A. Moss, A Concise Guide to Macroeconomics – What Managers, Executives, and Students Need to Know, Harvard Business School Press, 2007
5. Frank, R.H., Microeconomics and Behavior, McGraw-Hill, 2003
6. Gravelle, H. & Rees, R. Microeconomics, Pearson Education Limited, 2004
7. Mankiw, N. G., Principles of Macroeconomics (6<sup>th</sup> edition), Cengage Learning, 2011
8. Nicholson, W. & Stapleton, D.C., Microeconomics Theory: Basic Principles and Extensions, Harcourt Brace Company, 1998
9. Paul Krugman and Robin Wells, Macroeconomics (2<sup>nd</sup> edition), Worth Publishers, 2009
10. Perloff, J.M., Microeconomic, (2<sup>nd</sup> edition), Pearson Education Inc, 2010

11. Ragan, J.F. & Thomas, L.B., Principle of Microeconomics, Harcourt Brace Jovanovic, 1993

12. Steinemann, A.C., Microeconomics for Public Decisions (2<sup>nd</sup> edition), Askmar Publishing, 2011

### 7. Activities and time allocation

Section	Topic	Activity	Time allocation (period)
Section 1:	Chapter 1: Introduction to economics	Lecture	02
		Discussion	01
Section 2: Microeconomics for managers	Chapter 2: Applications of supply and demand model into public policy process	Lecture	05
		Discussion	03
		Practice	03
	Chapter 3: Production costs and Profit maximization	Lecture	05
		Exercise	02
	Chapter 4: Competition, monopoly and roles of government	Lecture	05
Discussion		03	
Section 3: Macroeconomics for managers	Chapter 5: Economic growth and inflation	Lecture	05
		Discussion	03
	Chapter 6: Fiscal and Monetary policies	Lecture	04
		Discussion	02
		Practice	01

### 8. Grading

- + Attendance: 10%
- + Discussion: 10%
- + Exercise: 30%

+ Final exam: 50%

Maximum grade: 10

## 単位制教育科目のシラバス

### 1. 講師に関する情報

科目の担当講師：Trương Quốc Chính

役職・学位：准教授・博士

業務時間・場所：週日の月曜日～金曜日、国家行政学院、ハノイ

住所：77 Nguyễn Chí Thanh, Hà Nội

電話番号： ; email:

その他の講師に関する情報（氏名、住所、電話番号、e-mail）

- ・ Nguyễn Đăng Thành、国家行政学院、電話番号、e-mail :
- ・ Ngô Thành Can、国家行政学院、電話番号、e-mail :
- ・ Hoàng Quang Đạt、国家行政学院、電話番号、e-mail :
- ・ Nguyễn Hoàng Anh、国家行政学院、電話番号、e-mail :

### 2. 科目に関する共通情報

- ・ 科目名：公共政策の哲学（英名：*Philosophy in Public Policy*）
- ・ 科目コード、単位数（授業、実習、自己研究）：30 時限（授業：20、自己研究：10）
- ・ 適用対象専門：公共政策。教育レベル：修士。教育形態：正規教育
- ・ 科目の構成（必修・選択）
- ・ 必修の学習内容：
- ・ 予習内容：
- ・ 平行に進められる学習内容：
- ・ その他の学習内容（あれば）：
- ・ それぞれの活動に対する単位の配分：
  - + 講義の受講
  - + クラスでの課題
  - + 討論
  - + 練習、実習
  - + グループワーク
  - + 自習



- ・科目の担当学科・学部：基礎理論

### 3. 科目の目標

#### 3.1. 科目の共通目標

- ・知識：政策プロセスにおいて利用される哲学的方法論についての知識の養成。
- ・技能：政策の立案、分析及び実施における哲学の実践。
- ・態度：政策プロセスにおいて哲学的方法論を自主的に活用することができる姿勢。

#### 3.2. 知識に関する科目の具体的な目標

- ・科目の必要性、そのアプローチと哲学および公共政策学との比較における新鮮性の再確認（公共政策における哲学の活用）
- ・政策プロセスの哲学的な問題の特定・分析：政策課題の発見と解決における哲学、政策立案の限界
- ・公共政策の設計における基本的な考え方（理念）：マルクス主義哲学の考え方と非マルクス主義哲学の考え方
- ・公共政策における国家公務員の倫理：政策の設計等、政策プロセスの活動に関係する公務における国家公務員の倫理（それぞれ各章の重要な内容について触れる）

### 4. 科目内容の要約

#### \* 概念と議題:

- ・哲学、理念、原理、哲学的方法論
- ・公共政策、策定、実施、分析、公共政策の評価
- ・政策の立案・制定において活用できる哲学的考え方や原理、方法論
- ・公共政策における哲学的方法論の活用の実践とその効果

（公共政策は上部構造による、社会・経済へのもっとも直接的な働きかけであるため、哲学的方法論で示される方向性と論理的で 堅固 な土台に基づいて設計されない限り、その実効性と効果を発揮することはできない。

\**研究手法*：いくつかの公共政策の策定・実施における哲学的方法論の分析により、それらの政策の成功・失敗の原因を特定する。（社会学調査の実施も可）

（科目のサマリーを 150 ワード以内でまとめる。サマリーでは概念、全体の理論や科目の主な理論、研究技法・手法、科目の成果と将来性について記載。本サマリーは年次報告書の科目の紹介や学生向けの広報資料に盛り込まれる。

## 5. 科目の詳細

それぞれの章や項目、小項目等、主なテーマごとの科目の詳細

### 第1章: 科目の概要説明(2時限)

1.1. 科目の必要性

1.2. 科目の目標

1.3. 科目のアプローチと本来の哲学・公共政策学と異なる内容

1.4. 研究手法

1.5. 研究範囲

### 第2章: 公共政策の設計における哲学(8時限)

#### 2.1. 政策課題の発見と解決における哲学

・政治や経済、文化、社会、思想、宗教、民族等、社会のそれぞれの側面の実情を調査研究し、国の規制・関与が必要とされる分野を特定する。

・政策課題を特定してから、解決すべき政策課題の優先順位や政策により影響を受ける対象者、政策の実行可能性・効果を検証する。

・政策により影響を受ける対象者の反応を予測し、プラスの影響を受ける対象者と負の影響を受ける対象者との比較を行った上で政策を見極める(哲学= 普遍的な関係や多面的な原則に関する理論)

・政策課題の解決とは政策実施に必要な**法的枠組み**として**政府規定**、すなわち関係省庁のルール(法律や政令、省令、通達、ガイドライン等)を構築することである(哲学= 社会・経済に対する政府の役割)

#### 2.2. 政策立案の限界(7時限x45分)

##### 2.2.1. 価値観の対立 (哲学 = 対立に関する理論：対立する考え方の統一と闘争)

・新しい政策ができると、それぞれのグループ(関係省庁や地方自治体、もしくは利益団体等)の間に対立(客観的な矛盾)が生じる。この対立をどのように解決すれば良いか。

=> 対立する考え方の存在を認め、検討において考慮すると同時にそれらの共通点を見つける必要がある。

=> 政策の設計はこれら対立する考えにうまく考慮しなければならない。(この部分については対立とその解決方法に関する事例の紹介が必要)

=> 対立する考え方がいずれも良い考え方である場合、どうすれば良いか。

+ 法律に基づくアプローチでは「法律を遵守する」というのが最高の判断基準である。

+ 政策に基づくアプローチでは対立する考え方の含まれる政策は実行可能かつ効率的で、広く展開できる政策として修正されなければならない。

=> したがって、法律と政策は表と裏のような存在である。

\* 上記の2つのアプローチを使ってもうまく設計できない場合、もう一度設計プロセスを踏んで必要な調整を加える必要がある。(哲学 = 政府の機能と使命)

### 2.2.2. 人間の認識の限界(哲学 = 認識理論)

・ 政策を設計する際は「未知」と「既知」に配慮しなければならない。

・ 政策の影響や効果・効力の予測は政策を実施する国家公務員の思考・知識の有限性に大きく依存する。

**第3章: 公共政策の設計における基本理念(哲学の考え方)(10時限)**(この部分については日本人の先生方は3.2にあるそれぞれの主義やモデルについて詳しく説明し、その基本精神が何なのか、参考資料としてどのような著書があるのか紹介してほしい。)

#### 3.1. マルクス主義哲学の考え方

##### 3.1.1. 客観世界の尊重と人的要因

##### 3.1.2. 全面性

##### 3.1.3. 発展

##### 3.1.4. 歴史と具体事例

##### 3.1.5. 理論と実践との統一化

3.1.6. 経済が政治を決定するが、経済よりも政治を優先しなければならない。

#### 3.2. 非マルクス主義哲学の考え方

3.2.1. 「正義論」(アメリカ)? (重点を置くべき内容であるが、ベトナム語訳の参考書待ちの状況)

##### 3.2.2. 「増分主義」?

##### 3.2.3. 「包括的合理化」モデル?

##### 3.2.4. 「ゴミ箱」モデル?

#### 3.3. 制度的にコントロールできる、実際の政策プロセス

### 第4章: 公共政策における国家公務員の倫理(3時限)

4.1. 賄賂を受け取ってはいけない。(なぜ?)

4.2. 政策の立案・実施の過程で、上司の指示が適切ではないと判断し、それに従いたくないと思ったらどうすれば良いか。

4.3. 政策実施の過程で、政府の指導を国民が受け入れない場合、どのような態度をとるべきか。

## 6. 教材 (テキストブック、講義資料、参考資料等)

- ・教育訓練省、哲学テキストブック (哲学以外の専攻の大学院生・研究生向け)、政治理論出版社、ハノイ、2006年
- ・国家行政学院、公共政策学テキストブック
- ・Trương Quốc Chính、マルクス主義に基づくベトナム法権国家の構築、国家政治出版社、ハノイ、2013年 (本書は図書館や本屋等で入手できる)
- ・少なくとも1つの必須教材 (現在、使用されている講義資料やテキストブック)
- ・それぞれの講義・学習の内容と形態ごとの参考資料。資料の研究における利便性の向上という観点から参考資料の重要な部分や重要なページについての記載は可。
- ・必須教材と参考教材は優先順位で記載する。(著者名、書物名、出版社名、出版年、入手可能な場所、ウェブサイト、録画テープ等)

## 7. 講義・学習の形態

・理論についての講義、そして学生と講師との意見交換・議論という2つの形態の組み合わせ

・講師から政策設計プロセスにおける哲学的方法論の活用に関する事例検討の課題が出される。(幾つかの具体的な政策課題に関連する事例)

・学生が自習・研究の時間で準備し、クラスで発表し、議論に参加する。

(これは講師にとっても、学生にとってもそして(科目の)担当者にとってもとても重要な内容である。これらの知識の伝授は理論の説明、課題、討論、グループワーク、自習・自己研究等といった形で行われる。講師は講義内容を毎年、改訂する。カリキュラムの各内容にはそれぞれの獲得単位が予め設定される。

## 8. 科目の学習成績に対する試験・評価の方法と形態

評価点数は10点満点とする。それぞれの試験・評価形態の配点は以下の通りである。

(配点比率は各講師の提案で決定)

- ・ 1つの中間小論文、30%
- ・ 1つのテスト、20%
- ・ 1つの試験(120分)、50%

MODULE OUTLINE  
**PUBLIC POLICY EVALUATION**

**1. Lecturers**

Lecturer in charge of the module: Nguyen Huu Hai

Academic title: Associate professor

Work place: National Academy of Public Administration (NAPA)

Address: 77 Nguyen Chi Thanh str., DongDa distr., Hanoi, Vietnam.

Tel:    email:

Teaching staffs (name, address, telephone, email)

- Hoang Mai, PhD. NAPA, cellphone:    , email:    ;
- Nguyen Van Hau, PhD. NAPA, cellphone:    , email:    ;
- Le Van Hoa, MA. NAPA, cellphone:    , email:    ;
- Ngo Hoai Son, NAPA, cellphone:    , email:    ;
- Nguyen Dang Tai, NAPA, email:    ;

**2. Information of the module**

- Module Title: Public Policy Evaluation
- Code: CSDG – 311    Credits (study in class/ practice/self-study): 03
- Specialty: Public Policy    Degree level: Master
- Training mode: Part time
- Module requirement: Compulsory module
- Prerequisite modules: Politics and Public Policy, Strategic Management in Public sector
- Previous modules: Public Policy Planning, Economics in Public sector
- Parallel module: Cost analysis – Benefits for Public Policy
- Other requirements: Combination between theory and practical exercise
- Allocation of credits for activities:
  - + Theory: 15 periods of theory (1.0 credit)
  - + Homework, class discussion: 35 periods (1.0 credit)
  - + Practice: 40 periods of practical work (0.5credit)
  - + Teamwork:

+ Self-study: 20 periods of self-study (0.5 credit)

- Faculty in charge of the module: Faculty of Administrative Science

### 3. Purpose of the module

#### 3.1. General training purpose of the module

- Knowledge: Mastering basic theory of public policy evaluation, public policy implementation monitoring and evaluation, evaluation methods of public policy implementation efficiency and result.

- Skill:

+ Ability to establish the basis for assessment, monitoring, evaluation and result report of program, project or public policy performance;

+ Ability to use appropriate methods to assess results of programs, projects or public

- Attitude: Recognizing the important role of monitoring and evaluation of public policy to use the results of policy evaluation in authority's projects and programs management.

#### 3.2. Specific training target of the module (for each important point of each charter/ issue).

### 4. Summary of module content:

“Public Policy Evaluation” is a compulsory module in master training program of public policy. This course presents systematic fundamental issues of public policy evaluation; monitoring and evaluating the implementation of public policy; at the same time, this module introduces the econometric approaching methods to assess the causal impact of public policy.

The main purpose of the module is to equip students with the knowledge and skills to monitor and evaluate the results of public policy; and evaluate the impact of public policy. This module also provides students the fundamental concepts and theory of assessment methods and how to apply these methods in the evaluation of public policy, especially in assessing the impact of public policy. At the same time, during the course, students are guided to apply these methods into practice through discussion of practical evaluation studies and evaluating exercises.

## 5. DETAILED CONTENTS

### CHAPTER 1: General knowledge of Public policy evaluation

#### 1. Concept and role of evaluation of public policy

##### 1.1. Concept of public policy evaluation

##### 1.2. Significance of public policy evaluation

### ***1.3. Function of policy evaluation***

## **2. Levels and elements of policy evaluation**

### ***2.1. Levels of policy evaluation***

2.1.1 National level

2.1.2. Local level

2.1.3 Professional organizations

### ***2.2. The elements of policy evaluation***

2.2.1 Evaluators of policy evaluation (advantages and disadvantages of each subject).

2.2.2 Public policy objectives

2.2.3 Public policy evaluation methods

2.2.4 Public policy evaluation means

### ***2.3. Factors affecting public policy evaluation***

2.3.1 **Degree of** Awareness of subjects

2.4.2 **Characteristics of** Institution

2.4.3 Stability of public policy

2.4.4 Public policy evaluation purpose

2.4.5 Relationships between stakeholders

2.4.6 **Costs and funding of** public policy evaluation

## **3. Policy evaluation approaches and evaluation criteria**

### ***3.1. Public policy evaluation approaches***

3.1.1. Public policy process evaluation

3.1.2. Public policy impact evaluation

3.1.3. Pre-intervention evaluation

3.1.4. Post-intervention public policy evaluation

### ***3.2. Public policy evaluation criteria***

**efficiency) hay hiệu suất (effectiveness) của chính sách.**

3.2.1. Efficiency



### 3.2.2. Effectiveness

## CHAPTER 2

### PUBLIC POLICY EVALUATION IN SOME COUNTRIES

#### 1. Public policy evaluation in the United States

- 1.1. **Brief history** of public policy evaluation
- 1.2. **Current state of public policy** evaluation
- 1.3. Advantages of public policy evaluation

#### 2. Public policy evaluation in Japan

- 2.1. **Brief history** of public policy evaluation
- 2.2. **Current state of public policy** evaluation
- 2.3. Advantages of public policy evaluation

#### 3. Public policy evaluation in Singapore

- 3.1. **Brief history** of public policy evaluation
- 3.2. **Current state of public policy** evaluation
- 3.3. Advantages of public policy evaluation

#### 4. Public policy evaluation in Vietnam

- 4.1. **Brief history** of public policy evaluation
- 4.2. **Current state of public policy** evaluation
- 4.3. Advantages of public policy evaluation

## CHAPTER 3: PUBLIC POLICY **IMPACT** EVALUATION

### 1. Objectives, requirements, and subjects and impact public policy evaluation

- 1.1. Purpose of impact public policy evaluation
- 1.2. Requirements of impact public policy evaluation
- 1.3. Objectives of impact public policy evaluation

### 2. Randomized method in impact public policy evaluation

- 2.1. Concept and application
- 2.2. Methods
- 2.3. Advantages and disadvantages
- 2.4. **Some typical examples**

## Exercise

### 3. Quasi experimental methods in impact public policy evaluation

- 3.1. Concept and application
- 3.2. Methods
- 3.3. Advantages and disadvantages
- 3.4. Some typical examples

## Exercises

### CHAPTER 4: THE EVALUATION OF POLICY IMPLEMENTATION'S RESULTS

#### 1. Purpose, requirements and objectives of the evaluation of policy results

- 1.1. Purpose of the evaluation of policy implementation's results
- 1.2. Requirement of the evaluation of policy implementation's results.
- 1.3. Objectives of the evaluation of policy implementation's results

#### 2. Process of the evaluation of policy implementation's results

- 2.1. The first steps
- 2.2. Define the tasks of evaluation of policy implementation's results
- 2.3. Define the outputs of policy
- 2.4. Develop the indicators
- 2.5. Data collection

#### 3. Methods of the evaluation of public policy implementation's results

- 3.1. Public policy output comparison method
- 3.2. Public policy output and typical implementation comparison method
- 3.3. Report of analysis results
- 3.4. Using evaluation results

#### 4. Plans for public policy evaluation

- 5.1. Concept, roles of public policy evaluation plan
- 5.2. Types of public policy evaluation plan
- 5.3. Contents of public policy evaluation plan

5.4. The relationships in building and implementation of public policy evaluation

**6. Policy implementation evaluation in national and local level**

6.1 Public policy implementation evaluation in national level

6.2 Public policy implementation evaluation in local level

6.3. Comparison the public policy implementation evaluation between national and local level

6.3.1. Implementation content comparison

6.3.2. Implementation types comparison

6.3.3. Impact comparison

6.3.4. Environment impact to the results of public policy implementation evaluation

**Exercise**

- - Evaluation the implement of a specific public policy (social welfare policy, population policy, investment policy.)

**CHAPTER 5: REPORTING AND USING PUBLIC POLICY EVALUATION RESULTS**

**1. Reports and presentation**

1.1. Requirements of reports

1.2. Structure of reports

1.3. Guideline of reports

1.4. The crucial points when preparing presentations

1.5. The rules when preparing presentations

**2. Describing information methods**

2.1. Chart

2.2. Table

**3. Using the results of policy evaluation**

3.1. In publicpolicy planning

3.2. In publicpolicy implementation

3.3. In budgeting

### 3.4. In media

#### **Exercise**

## **6. Documents**

### **6.1. Compulsory documents**

- National Academy of Public Administration, Public policy Implementation and analysis in 2002, NAPA Library.
- Prof Nguyen HuuHai- Public Policy, the basics, the National Political Publishing House, 2014, Department of Public Administration National Academy of Public Administration
- Pro Nguyen HuuHai, MA Le Van Hoa, Associate of public policy analysis, National Political Publishing House, 2013, Department of Public Administration National Academy of Public Administration

### **6.2. Selective documents**

- Lind G. MorraImas, Ray C. Rist, World Bank, The road to results: Design and the implementation of effective evaluation, 2009;
- Le VinhDanh- Public policy in the United States, 1935-2001, Statistical Publishing house 2001, NAPA Library.
- Jean-Pierre Cling, MireilleRazafindrakoto, Francois Roubaud,Public Policy Evaluation: method, obstacles and results, workshop in Tam Đảo, Việt Nam, 2008, NAPA Library.
- Public policy planning process in Japan–International Cooperation Department - NAPA
- Shahidur R. Khandker, Gayatri B. Koolwal, và Husain A. Samad, World Bank, Public Policy Evaluation, , 2010, NAPA Library.

## **7. Forms of teaching- studying**

- Teaching method lecture chapter 1, chapter 3
- Combined teaching methods with presentations, discussions and homework in chapters 2 and 4
- Students study and essay in Chapter 5

## **8. Course requirements**

- Midterm exam: 20%

- In-class discussion: 20%
- Paper: 20%
- Final exam: 40%



+ In-class exercises and discussion: 0,4 credit (12 classes)

+ Homework: 0,3 credit (9 classes)

+ Exams and reviews: 0,1 credit (6 classes)

Total: 45 classes (\*1 class = 50 minute)

- Faculty: Administration Studies

### 3. Course objectives

#### 3.1. General objectives

After the course, the students will be able to:

- **Knowledge:**

Understand the primary knowledge in CBA of projects and public policy intervention.

- **Skills:**

+ Conduct financial analysis of a project or public policy intervention

+ Conduct an economic analysis of a project or public policy intervention

- **Attitude:**

Recognize the significance and application of CBA in valuing efficiency of a public project or public policy intervention.

#### 3.2. Detailed objectives

- Students can understand the concepts, advantages and applications of Cost Benefit Analysis.;

- Grasp the necessary steps of Cost Benefit Analysis process;

- Understand the theoretical background of Cost Benefit Analysis;

- Differentiate financial analysis and economic analysis;

- Identify and categorize costs and benefits in CBA;

- Quantify and measure in monetary terms benefits and costs in different contexts;

- Calculate present values of benefits and costs;

- Calculate benefits and costs in risk analysis;

- Handle uncertainty of projects and programs;

- Apply project selection criteria in decision making consultation;

- Answer questions and solve situational exercises relating to Cost Benefit Analysis, financial analysis, cost and effectiveness analysis

#### 4. Course contents

Cost-benefit analysis (CBA) is a compulsory course of Master of Public Policy Program, National Academy of Public Administration. CBA is a tool used by policy makers to identify whether a project or policy should be implemented, continued, expanded or removed. Also, it provides the method to choose the economic effective project, or the most economic effective projects out of several projects. However, in reality, conducting a cost and benefit analysis is not simple. It requires the analyst to link economic theories with statistical science and creative predicting skills.

The course contents are detailed as follows:

##### **Chapter 1: Overview of cost-benefit analysis**

- Definition and role of cost-benefit analysis
- Theoretical basis for cost-benefit analysis
- Process of cost-benefit analysis
- Financial analysis and economic analysis (cost-benefit)

##### **Chapter 2: Valuing costs and benefits**

- Valuing costs and benefits in autarky
- Valuing costs and benefits in an open economy

##### **Chapter 3: Valuing typical factors**

- Valuing land, labor, natural resources
- Valuing public goods, intermediate goods and social services
- Valuing externalities and environmental impacts

##### **Chapter 4: Discount, risk handling and policy selection criteria**

- Discount to present value
- Risk handling technique
- Policy selection criteria

#### 5. Detailed course contents

	Content	Theory	Discussion	Self-research	Total
1	Overview of cost-benefit analysis	04	01	02	07
2	Definition of cost and benefit	06	04	03	13
3	Valuing typical factors	04	04	03	11
4	Discount, risk handling and policy selection criteria	04	03	01	08
		18	12	09	45



## **6. Materials**

### **6.1. Required materials**

#### **Vietnamese**

- National Academy of Public Administration, *Cost benefit analysis*.
- National Academy of Public Administration, *Economics and Public Policy*.
- National Academy of Public Administration, *Statistics in Policy Analysis*.

### **6.2. Reference**

#### **English**

- Anthony E. Boardman, David H. Greenberg, Aidan R. Vining, David L. Weimer (2011), *Cost-Benefit Analysis: Concepts and Practice*, Fourth Edition, Prentice Hall.
- Boardman, Vining and Weimer (2006), *Cost-Benefit Analysis: Concepts and Practice*, 3<sup>rd</sup> Edition, Prentice Hall.
- E.J. Mishan and Euston Quah (2007), *Cost-Benefit Analysis*, 5<sup>th</sup> Edition, Routledge.
- Frances Perkins (1994), *Practical Cost Benefit Analysis: Basic concepts and applications*, Macmillan Education Australia PTY LTD.
- William K. Bellinger (2007), *The Economic Analysis of Public Policy*, Routledge.

## **7. Teaching and learning method**

- Lecture-demonstration;
- Q&A;
- Group discussion;
- Group work;
- Situational exercises;
- Self-research

## **8. Evaluation and grading methods**

The 10-point grade scale is applied, with examinations for each subject according to course aims, including (the weight of each part is proposed by teachers):

- Attendance: 10%
- Group discussion and exercises: Up to each teacher
- Mid-term exam: Up to each teacher
- Final exam: 50%

**SOCIALIST REPUBLIC OF VIETNAM**  
**Independence - Freedom – Happiness**

**COURSE OUTLINE**  
**SCENARIO PLANNING FOR THE PUBLIC POLICY**

**1. Information on the faculties:**

Instructors:

Associate Professor, PhD DANG KHAC ANH

Titles, academic titles, degree: Deputy Dean of Administrative Science  
Faculty,  
Associate Professor, PhD.

Contact address: Administrative Science Faculty - The National  
Academy of Public Administration  
77 Nguyen Chi Thanh - Dong Da – Hanoi.

Phone: E-mail:

Associate Professor PhD LUU KIEM THANH

Titles, academic titles, degree: Deputy Director of the National Academy of  
Public Administration,  
Associate Professor, PhD.

Contact address: 77 Nguyen Chi Thanh - Dong Da – Hanoi.

Phone: E-mail:

**2. Course overview:**

- Course name in Vietnamese: Xây dựng kịch bản chính sách
- Course name in English: Scenario planning for public policy.
- Course code: No. of Credits (class participation/ practice/ self-study): 03.
- Apply for training program: Public Policy
- Training degree: Master Training form: Full time
- The unit requirement: (*Core or Optional*) Mandatory
- Prerequisite: + Common issues in public policy  
+ Policy Analysis  
+ Statistics and Econometrics

- Units in advance:
- Units simultaneously:
- Other requirements to the course (if any):
- Allocation of credit hours for the following activities:
  - + Lecture: 20
  - + In-class case study: 25
- Faculty/Department in charge of the unit: Administrative Science Faculty.

### 3. Objectives:

After finishing this course, students can:

- *Knowledge:*
  - + Understand the role and significance of the scenario planning in public policy.
  - + Recognize opportunities and challenges of Vietnam in the future that impact on public policy planning.
  - + Understand ways to plan and evaluate scenarios of public policy.
- *Skills:*
  - + Apply knowledge and technique to assess the policy scenario in work.
- *Attitude:*
  - + Raise awareness of the objectivity of public policy.
  - + Raise awareness of applying the scientific knowledge in planning the public policy, limiting subjectivity and voluntarism.

### 4. Summary of the course:

Policy scenarios help to assess the environment in which the government shall operate in the future in order to propose possible policies in the future. Along with awareness of policy scenarios, policy makers will be more active, limiting subjectivity in the process of policy formulation.

This course provides students basic knowledge and skills to scientifically predict the impacts on public policy and influences of public policy in the future. These predictions contribute to decide the policy objectively and accurately, which matches specific conditions and circumstances and thereby improving quality of public policy planning in Vietnam today.

### 5. Course details:

## **1. General theory of scenario planning for public policy**

- 1.1. Concept of scenarios and policy scenarios
  - Scenarios
  - Policy Scenarios
- 1.2. Contents of policy scenarios
- 1.3. Benefits of using scenarios in public policy planning
- 1.4. The requirements set for the policy scenarios

## **2. Factors affecting to the development of public policy scenarios**

- 2.1. The probable risks (predictable and unpredictable)
- 2.2. Political Orientation
- 2.3. The level of socio-economic development of the nation
- 2.4. The capacity of policy-makers
- 2.5. The technical tools used in the process of policy planning

## **3. The process of policy scenarios planning**

- 3.1. Identify the factors affecting the development of Vietnam in the future
- 3.2. Identify scenarios frame
- 3.3. Plan probable scenarios
- 3.4. Assess the scenarios
- 3.5. Select the most appropriate scenario

## **4. Case Study**

## **6. Learning resources (*textbooks, lecture notes, references*)**

1. Kees van der Heiden (1996): *Scenarios: the art of strategic conversation*, John Wilen& Sons, 1996
2. Gill Ringland, *Scenario Planing (2014): Managing for the Future (2<sup>nd</sup> ed.)*, John Wilen& Sons, 2014
3. Garry D. Peterson/Graeme S. Cumming/Stephen R. Carpenter: *Scenario planning: a tool for conservation in an uncertain world*, in: *Conservation Biology*, Vol.17 (No2) April 2003, p.358-366.

4. Oregon Department of Transportation (2013): Oregon scenario planning guidelines- Resources for Developing and Evaluating Alternative Land Use and Transportation Scenarios.
5. Schoemaker, Paul J.H.: Scenario planning: a tool for strategic thinking, in Sloan Management Review 36, p.25-40.
6. Shell (2013): New Lens Scenarios- A shift in perspective for a world in transition.

## 7. Forms of training - learning

(This is a very important content for faculties, students and managers. Every content is taught in main forms such as theory, exercises, discussion, practice, group activities and self-learning, self-study ... Lecturers should update this content each year. The **credit hours** performed at each above form must be defined in each content in the training - learning schedule).

- Content theory: teaching in the form of presentations and question-answer
- Assignments: class divided into groups and each group will practise scenarios planning for a specific policy areas (transport, education, culture, tourism, ...).

The techniques and tools used: + Self-reflection

+ Group discussion

## 8. The method and forms of evaluation

Apply scale of 10, split the goal for each form of examination - evaluation, including the following components (the weight of each part is recommended by faculty):

Examination – evaluation activities		Execution time	Weighting points
Regular examination, evaluation	Class participation	80%	40%
	Group discussion	Regularly in class	
Unit examination, evaluation	Result of group assignment	Performed in process of training Assessed at the end of the unit	60%

**NAPA-JICA PROJECT**  
**MASTER TRAINING PROGRAMME OF PUBLIC POLICY**

**MODULE**

**PUBLIC POLICY FORMULATION**

**Hanoi, 2015**



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## Chapter 1

### GENERAL CONCEPT OF PUBLIC POLICY FORMULATION

#### 1.1. Definition and importance of public policy formulation

Public policy formulation is the initial phase of a policy process. The nature of this phase is that a public policy is researched and proposed, and then enacted by state entities. This phase will determine the birth of a policy.

Public policy formulation is considered as the founding stone for the whole policy process that is associated with determining policy problems and developing solutions to resolve selected problems. Public policy formulation is the use of necessary means in a selected process to design a policy and formulate contents of a policy. The product of public policy formulation phase is manifested in form of decisions issued by competent authorities to be applied in practice.

This phase plays a very important role in the policy process. If a policy formulation process is standardized, it is possible to adjust problems that are selected to be resolved. If the selection is correct but policy development fails to meet quality assurance, policy process will be just formalistic. Correct and scientific policy formulation will help develop a good policy, which is the pre-condition for that policy to be effectively applied in practice. On the contrary, poor formulation will result in an inappropriate, impractical, and infeasible policy that will bring about undesirable results in the administration process. These results are not only temporary and local, but may also last in a long-term and relate to different fields, industries, and entities.

Specific roles in public policy formulation are:

- Public policy formulation is the concretization of concepts and means of resolving an urgent problem in the social life in order to reach desirable objectives. The nature of policy development is guaranteeing a positive impact that changes the reality in a positive way, increasing values to satisfy community needs, and ensuring the harmony in the allocation of benefits among social groups, fields, and administrative territories.

- Policy development process will help the state affirm its powers and demonstrate its administration role in socio-economic sectors from time to time. For effective administration, the state must be active in establishing its administration mechanism by means of policies and adapting to socio-economic movements under objective rules. If such a mechanism functions compatibly with operation mechanism of the economy and development level of the society, it will promote the development of socio-economic processes. On the contrary, it will hold back such movements. Therefore, the effectiveness of enacted policies is a measure of management and administration qualifications of the state in various fields.

- Proposing an appropriate policy that responds to actual demands will largely determine positive results in practice. On the contrary, proposing a wrong policy will result in unpredictable severe consequences in social life.

- Policy formulation is the pre-condition and is closely related to other phases of the policy process. Policy formulation creates legal bases that require to be implemented in practice. In the meanwhile, contents of a formulated and enacted policy are also bases to assess the whole policy process. Typically, implementation process as well as achieved results of a policy in practice are compared against the objectives, requirements, solutions, resources, and time established in such policy. Implementing and assessing a policy also result in requirements and practical bases to continue revising the enacted policy.

## **1.2. Principles of public policy formulation**

Principles are understood as fundamentals as the basis for public policy formulation process that require to be complied with. Subject to political notion and orientation as well as socio-economic context, each state will select an appropriate system of principles in its policy formulation process. However, there are fundamental principles adopted by most countries. These principles are as follows:

### ***1.2.1. Principle of serving majority interests***

A state is elected by its people and, in principle, it represents common interests of majority of the people; therefore, public policies enacted by the state must serve majority interests. Public policies reflect the government's will and tools

to manage the society in accordance with its pre-defined objectives. These objectives must reflect the will of majority of the people, which is the reason why they vote to elect that government and pay taxes to maintain it.

As a matter of course, there will be a minority group that fails to obtain any interests from the state policies, or is even derived of their interests (e.g. those committing crimes and conducting acts against national interests, etc.). But the fact that the state policies are against these people is for protecting legitimate common interests of the majority.

The policy formulators and policy decision makers themselves – public servants in the state system – are those that voluntarily commit to serve the majority interests. Service ethics govern and lead them to formulate policies that advance the interests of majority of people.

### ***1.2.2. Principle of democratic centralism***

The principle of democratic centralism in public policy formulation is shown in the occurrence of problems and development of policies that require the participation of many individuals, social groups, and community, etc. Also, considering and selecting the optimal policy option to serve the majority interests in compliance with politic objectives and orientation of the State is a centralized process.

Determining the problems and preparing policies is a democratic process as it engages the participation of many people. Such participation provides a variety of information and feedbacks so that the policy makers are informed to make a sound decision. Involving the participation of many people in policy formulation process is also helpful to mobilize collective knowledge and experience to formulate a good policy. In the phase of assessing policy options, it is very important to involve the participation of professional experts and community opinions on policy options in the process to provide important arguments on policy quality. The participation of policy entities will be helpful to create policy products with the consent of most of social classes, which will result in effective performance in implementing the policy.

Besides, decision making is a centralized process as reflected by the fact that a group representing the government or a single authorized person shall make a

decision on that policy. Certainly, this centralization is based on the contribution of everyone in developing and assessing policies, which is a reliable basis for decision making. It can be said that democratic centralization is a principle that dominates policy formulation process.

### ***1.2.3. Principle of inheritance***

In formulating a public policy, it is necessary to inherit the insights from the formulation of other public policies. Usually, a new policy does not appear out of the ether, but it is, to a certain extent, the succession of a pre-existing policy. It is possible that in other countries in the world, a policy is enacted to resolve a similar problem. Or, an interested policy problem has been mentioned and addressed in some research or report. Whichever the case it is, policy formulation may inherit a part of something that has already existed. Inheriting provides the policy maker with a proven basis to deploy the formulation of a new policy. Inheriting also helps with saving time and providing an already available formula in formulating a new policy. It should be noted, however, that inheriting must be selective, i.e. never applying the original insights but selecting appropriate ones that are suitable to the new context, and combining inheritance with innovation to adapt to changing circumstances.

### ***1.2.4. Principle of systematization***

An enacted policy is an organic part of a functioning policy system at any time. So, formulating a policy must take into account the consistency of and conformity with existing policy system. This means that contents of a newly enacted policy must not go against existing policies, but ensure the consistency of the State regulations as a whole on managing the fields related to the existing problem. As such, the systematization of policy formulation is reflected by the compatibility with other policies to create a united system of mutual interaction and supplementation.

However, it is likely that a new policy may be inconsistent with pre-existing ones because of changing contexts and new requirements, and then it is necessary to revise former policies that are no longer appropriate to ensure the consistency of policy system and compliance with requirements in life.

Besides, policy formulation process results in conflicting priorities. Then it requires such a preferred option that does not interrupt system development.

The principle of systematization is also reflected in each formulated policy itself, i.e. all of its contents must be considered and developed as a united system with established goals to ensure the consistency between objectives and solutions, and consistently comply with actual conditions as well as methods and tools for such a policy.

### **1.3. Policy formulation models**

A policy formulation model can be understood as a method of preparing and making a decision on a policy. A number of policy formulation models are presented in research literature on public policy as follows: Incremental Model, Rational Model, and Mixed Model.

#### ***1.3.1. Rational Model***

This is an ideological model of policy formulation. This model is ‘rational’, i.e. it describes procedures to make a decision and select the most effective means to achieve policy objectives. Rational theories originate from the enlightenment of rationalism and positivism, an ideology that seeks to develop scientific knowledge to advance conditions for human based on the belief that social problems must be resolved in a scientific and rational manner by collecting all of information on the problems and alternative solutions, and then selecting the best alternative. The task of policy analysts is regarded as developing relevant knowledge and then providing it to the government for application.

Usually, this model is associated with the objective of developing a totally new policy as a result of actual problems in the socio-economic life. Problem solving method under this model normally makes sure to develop a stricter and more persuasive and sensitive policy than existing one(s). This is because policy formulators are not considerably relying on or being dominated by existing policies. Policy analyses will be based on fundamental principles and standards to ensure the science, practicability, and innovation of policy formulation process.



Rational model says that policy formulation consists of activities to be carried out in the following scientific and rational order<sup>1</sup>:

- Determine policy problems.
- Establish problem-solving objectives.
- Identify and list alternative options to achieve the objectives.
- Forecast all of significant consequences of each alternative option and estimate corresponding probability.
- Finally, select the option that is able to resolve the problem at the least expenses.

A rational model has following advantages:

- Generate potentially new, innovative ideas as the incentives for promoting the development.
- Ensure process coherence, which likely identifies defects in the policy, and analyzes and clarifies causes of the impacts.
- Stimulate creativity and suggest many alternative options to resolve a problem. Ensure the independence of research outcome without being reliant on or dominated by traditional results.

However, many analysts have pointed out certain disadvantages of this model, including:

Firstly, it only leads to maximum results when all of possible alternative options and their costs are assessed before making a decision – ‘comprehensive-rational’ model of decision making. In fact, there are limitations on the decision maker's abilities to consider all of alternative options and calculate costs and benefits of each one. Besides, there are political and institutional difficulties that have impacts on option selection and decision making.

Secondly, this model assumes that the decision maker knows the consequences of each option beforehand, which is rarely the case in practice.

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<sup>1</sup> Adapted from Michael Carley, *Rational Techniques in Policy Analysis* (London: Heinemann, 1980):11

Thirdly, each policy option results in a number of positive and negative outcomes that makes the comparison between them become a real challenge. Whether an option is effective or ineffective is totally dependent on the context; therefore, the decision maker cannot give clear conclusions on better alternative options.

Rational model critics hold that public policy decisions in fact do not maximize benefits against costs but, instead, target to satisfy a certain standard pre-defined by the decision maker in considering and resolving a problem.

### ***1.3.2. Incremental Model***

Suspicion on the practicability or even usefulness of rational model leads to efforts in order to develop a theory on policy decision making that is closer to the decision maker's actual behaviors in practice. As a result, incremental model is presented that describes making a public policy decision as a process characterized by the negotiation and compromise among decision makers. Final decisions are given as a reflection of political feasibility rather than rational desire.

According to Charles Lindblom, decision makers develop policies through a process so-called “successive limited comparison” with previous or similar decisions. Making a policy decision will undergo a process advanced from existing decisions, step by step and level by level. Therefore, a new decision will just be a little different from existing ones; in other words, changes are incremental or successive<sup>2</sup>.

There are two reasons to which a decision is normally not materially different from current situation. Firstly, policy makers can forecast costs and benefits of a step-by-step progression more easily than determining values and consequences of a totally new proposal. As a result, the new policy is both the progression and a step-by-step change of current situation. Secondly, existing regulations and procedures are often slow-changing; therefore, a totally new policy proposal will be restricted by these regulations and difficult to be successfully implemented.

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<sup>2</sup> Charles E. Lindblom, ‘Still muddling, not yet through’, *Public Administration Review* 39,6(1979):517

In this model, problem-solving options are identified by trial and elimination method. The decision maker considers a number of similar options and selects the most incremental one.

This model is advantageous as it is easy for both the formulator and implementing organization, results in less major fluctuations, and, therefore, mostly causes no interruption on policy stakeholders and others. This model also ensures the stability with significantly reduced costs because it is considered as a safe one.

Incremental model is a model that reflects current practices of policy making in many regions. However, incremental model of policy formulation has certain limitations. It is observed to be only effective when the relevant problem to be addressed by the policy and means of policy implementation change little. Incremental model is characteristic for policy formulation process in a more stable environment than extraordinary circumstances.

Since it mostly inherits on the basis of existing policies, a new policy is rarely a breakthrough or generating any major turning point that materially changes the social problems to be resolved. This model limits the dynamism and creativity in policy process, resulting in a staff of inactive, conservative participants in that process. Since changes of a newly formulated policy in this model are mostly insignificant, its adaptability to rapid-changing socio-economic conditions is usually passive. In some cases, the policy fails to catch up with sudden changes, especially in the current context of international integration.

### ***1.3.3. Mixed Model***

Due to the limitations of rational and incremental models, policy researchers introduce a mixed model to correct their weaknesses by combining factors of both models. According to Amitai Etzioni, making an optimal decision will involve a brief study of alternative options and a detailed investigation of the most promising options<sup>3</sup>. This model is more innovative than incremental model, but does not impose irrational requirements of rational model.

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<sup>3</sup> Amitai Etzioni, 'mixed-Scanning: A "Third" Approach to Decision-making', *Public Administration Review* 27,5 (1967): 385-92

This model ensures the fundamental principles of public policy formulation, especially the principle of inheritance. It also creates breakthroughs because solutions are developed on the basis of carefully analyzing new proposals. Thus, it will be able to balance costs, ensure the effectiveness in managing, as well as create new values for the developed policy.

#### ***1.3.4. “Garbage Can” Model***

In the 1970s, March and Olsen proposed a so-called “garbage can” model<sup>4</sup> that even repudiates the rationality and limitation of incremental model. According to March and Olsen, decision making is an ambiguous and unpredictable process that has a loose connection with seeking means to achieve the objectives. They employ a metaphor, “garbage can”, to separate the halo of science and rationality associated with decision making process by former theorists. They try to emphasize that policy formulators are usually not clearly aware of the objectives and cause-effect relationship in making a decision. Some case studies proved that public decisions are often made suddenly and disorderly. In fact, however, garbage can model perhaps is an overstatement of what it really is. Its significance is that it breaks the bottlenecks surrounding the never-ending dispute between rational model and incremental model, enabling the research on aspects of decision making in a certain institutional context.

#### ***1.3.5. Subsystem Model***

Subsystem model is based on John Forester's theory on decision making styles. He holds that there are at least five different decision making styles associated with six sets of conditions<sup>5</sup>. According to him, decision making styles and types of enacted decisions change over the course of matter and institutional context.

Forester holds that to make a decision under a rational model, it is necessary to satisfy following conditions. Firstly, the number of decision makers must be limited, just a few or a single. Secondly, organizational context for making a decision must be simple without any influence from other policy entities. Thirdly, the problem must be

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<sup>4</sup> James March and Johna Olsen, ‘Organization Choice under ambiguity’ in James March and Jodan Olsen (eds), *Ambiguity and Choice in Organization*

<sup>5</sup> John Forester, ‘Bounded Rationality and the Politics of muddling through’ *Public Administration Review* 44, 1 (1984): 23-31; John Forester, *Planning in the Face of Power* (Berkeley: university of California Press, 1989)

duly identified; in other words, its scope, duration, value, and consequences must be clearly understood. Fourthly, information must be as perfect as possible; in other words, it must be sufficient, accessible, and comprehensive. Finally, decision making must not be hurried, i.e. there is enough time for the decision maker to consider every possible scenario and identify existing and predicted consequences.

**Figure 1. Decision making parameters**

Parameter	Dimension
1. Factor (decision maker)	Single – Multiple
2. Institutional environment	Single, Multiple; Closed, Open
3. Problem	Clearly defined – Complex, ambiguous
4. Information	Perfect – Conflict
5. Time	Unlimited – Limited

If these five conditions are not satisfied, people will seek other decision making styles. Number of decision makers can be extended to unlimited; institutional environment may involve many different organizations and even expand to external influence to some extent; problem may be unclear or sensitive to different explanations; information may be insufficient or distorted; and time may be limited, restricted, or manipulated. These parameters are set out in Figure 1.

From this viewpoint, Forester says that there are five possible decision making styles: Optimal, Satisfactory, Exploratory, Negotiating, and Organizational. Optimal style means making a decision on basis of rational model with aforementioned conditions. Other styles are dependent on the level of meeting the conditions. Knowledge constraints lead to Satisfactory decision-making style. Other styles are mentioned inter-connectedly by Foresters, so it is difficult to differentiate them clearly. Exploratory decision-making style is likely to occur when a problem is vague. Negotiating style is likely when many agents participate in resolving a problem without information and time. Organizing style is related to many institutions and agents with sufficient time and information resources but also many problems. These styles are related to a large number of more complicated agents and institutions, challenging problems, insufficient or distorted information, and limited time available to make a decision.

**Figure 2. Basic decision making styles**

		Complexity of the policy subsystem	
		High	Low
Severity of constraints	High	Incremental Adjustment	Satisfactory Exploration
	Low	Optimal Adjustment	Rational Exploration

Forester's model may be further improved by representing his variables<sup>6</sup>. Two major parameters are (1) complexity of the policy subsystem to resolve a problem, and (2) severity of difficulties to be faced with. Figure 12 indicates four fundamental decision making styles based on the two dimensions as a result of this analysis: complexity of the policy subsystem and severity of constraints.

So, making a policy decision is varied subject to the complexity of the policy subsystem and constraints on the decision maker. In this model, a complex policy subsystem is more likely related to adjustment strategies than exploration ones. A high level of obstacles may lead to negotiating approach in making a decision while a low level of obstacles is very likely the condition for rational or optimal approaches.

## **1.4. Policy formulation process**

### ***1.4.1. Notions on policy formulation process***

Public policy formulation is a frequent activity of the State that is conducted in a certain process. Public policy formulation process comprises of different procedures and steps to formulate a public policy. However, public policy formulation is just a phase in the overall policy process. As a result, the steps of formulating a public policy are also a part of an early phase of the policy process.

There is currently a common notion in Vietnam that the policy process comprises of 3 main phases: (i) policy formulation; (ii) policy implementation; and

<sup>6</sup> Modelling from Martin J. Smith, 'Policy Networks and State Autonomy' in *The Political Influence of Ideas: - Policy Communities and the Social Sciences*, eds S.Brooks and A.-G Gagnon. New York: Praeger, 1994

(iii) policy assessment. Accordingly, public policy formulation is the early phase of the policy process, from the occurrence of a problem that is then considered by social groups and included in the policy agenda by competent individuals or organizations, to the official preparation, review, selection and adoption, and enactment of a policy by competent authorities.

In the world, there are different notions on the policy process. Policy formulation in the notion of Vietnam will correspond to a single or several phases in the policy process as in the notions of international authors.

Harold D. Laswell – the pioneer in the field of policy science - depicted the policy process as comprising of 7 steps: information collection; proposal; decision; guidance; application; finish; assessment. Accordingly, policy formulation phase comprises of following three steps: (i) information collection: collect, process, and communicate information to participants in decision-making process; (ii) proposal: participants in decision-making process will research to propose specific policy options; (iii) decision making: decision makers will provide a course of action<sup>7</sup>.

In the early of 1970s, Gary D. Brewer introduced 6 steps of the policy process, including: initiative/initiation; estimation; selection; implementation; assessment; and finish. Public policy formulation will accordingly comprise of three steps: (i) Initiative/initiation: perceive the policy problems, define the problems and propose solutions to resolve the problems. (ii) Estimation: calculate risks, costs and benefits for each of proposed solutions, including technical assessment and norm selection. This step will eliminate infeasible options and rank the others in a desirable manner. (iii) Selection: accept or do not accept an option<sup>8</sup>.

In the 1970s and 1980s, Charles O. Jones and James Anderson introduced the famous model of 5 stages: agenda establishment; policy development; policy decision; policy implementation; and policy assessment. Policy formulation will comprise of three stages: (i) Agenda establishment: means the process in which public problems are brought to the attention of the State. (ii) Policy development: means the process of developing different policy options to resolve public problems.

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<sup>7</sup> Harold D. Lasswell: *The Decision Process: Seven Categories of Functional Analysis*, College Park: University of Maryland, 1956.

<sup>8</sup> Gary D. Brewer: *The policy Science Emerge: to Nurture and Structure a disciplines*, *Policy Science* 5 (1974), 239-244.

(iii) Policy decision: means the process in which competent state authorities adopt a specific course of action or non-action<sup>9</sup>.

William N.Dunn expanded and specified the model by Charles O.Jones and James Anderson into a 7-stage model: agenda establishment; public policy development; policy adoption; public policy implementation; policy revision; policy continuance; and public policy termination. Here, public policy formulation also comprises of 3 similar stages like that in the model by Charles O.Jones and James Anderson<sup>10</sup>.

So, policy formulation process will comprise of following steps:

- Determination of policy problems: this is the stage of identifying a policy problem existing in the socio-economic life, reviewing current situation of the problem, diagnosing causes of problem, proposing policy problem title, and bringing the policy problem to the attention of the public community and state agencies relating to the field which has problem.

- Inclusion of problems in the agenda: in this stage, a policy problem is submitted to competent authorities by important persons or state agencies to be included in the agenda for public policy development in the upcoming period. This stage also involves the approach to and influence on competent characters so that the problem is accepted in the agenda.

- Policy preparation: When the problem is included in the agenda, competent authorities will officially assign it to a responsible state agency for policy preparation. This agency will collaborate with relevant agencies, even including non-state ones, to prepare the policy, and research and develop contents of the policy. Here, a number of policy options are proposed and preliminarily assessed as a policy scenario.

- Policy review, selection and adoption: the competent authorities will review and select the best policy option that satisfies desirable criteria, and then officially enact that policy. After being enacted by the competent authorities, the policy takes legal effect and is implemented in order to resolve the relevant problem.

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<sup>9</sup> Charles O. Jones: An introduction to the study of public policy, Monterey, CA: Brooks/Cole, 1984.

<sup>10</sup> William N.Dunn: Public policy analysis: An introduction, Fourth Edition, Prentice Hall, 2007, p 46.



In fact, because of the differences in policy development, there are likely two forms of a policy formulation process:

*Firstly*, problem-specific policy formulation process.

Problem-specific policy formulation process is actually a policy formulation process with full steps in the aforementioned order. This process starts with a certain problem occurring in the socio-economic life until being brought to the attention of the society and becoming an urgent problem among public community. And then, the problem is introduced into the agenda and implemented in the following steps until a policy is enacted.

*Secondly*, objective-specific policy formulation process.

In fact, it is sometimes likely that the policy formulation process starts with policy objectives. This can be the case when a policy problem is not brought into attention by the people, but it is addressed top-down by competent levels in the state system, or even an idea given by a senior government leader.

There is a fact that, in many cases, a policy originates from strategies, action programs, or socio-economic development orientations as set out by state leaders. To implement these strategies, programs, or orientations, higher-level state agencies will give a request for policy development in the agenda. In this case, policy development originates from the pre-defined policy objectives. Competent leaders present their ideas and desirable objectives on the policy, which are then concretized into a policy title. This kind of policies is accepted in the agenda very easily.

From this, the proposed policy is assigned to a responsible agency in the state system to develop. The next steps will follow the relevant order of the policy formulation process.

In this case, a policy problem isn't the starting point in the policy formulation process. It will even be named based on desirable policy objectives as determined by competent levels. The problem may overlap with social demand, but that demand hasn't been clearly defined previously. In this case, however, the policy problem is usually related to future forecast of socio-economic development closely associated with the demand for socio-economic development that is targeted by leaders of the state system.

### ***1.4.2. Current practice of applying policy formulation process in Vietnam***

Public policies may be expressed in different forms, including laws and statutory documents of the State, programs, projects, action plans, etc. For each form of a policy, there is an appropriate policy development and enactment process (see Figure 3).

When a policy is expressed in the highest form of authority such as legal document, ordinance, or overall program of The National Assembly, the policy development and enactment process comprises of following steps:

1) A policy problem is mentioned by the subjects so affected by such a problem. The problem becomes urgent and is brought to the attention of the community, public media, and organizations of political system.

2) State agencies become aware of the policy problem (from social demand, leaders' direction, or guidelines, policies, and notions of the Party).

3) Ministry in charge of relevant field (i.e. relevant functional service) reviews the problem and report to the Minister. Upon the Minister's directions, the functional service conducts a preliminary assessment of the problem, determines policy demand, and proposes to the Minister.

4) Minister reports to the Government on policy demand and preliminary solution(s).

5) The Government reviews and submits a report to the National Assembly/National Assembly's Standing Committee (NASC) on policy demand. NASC reviews to include the problem in the agenda of the National Assembly.

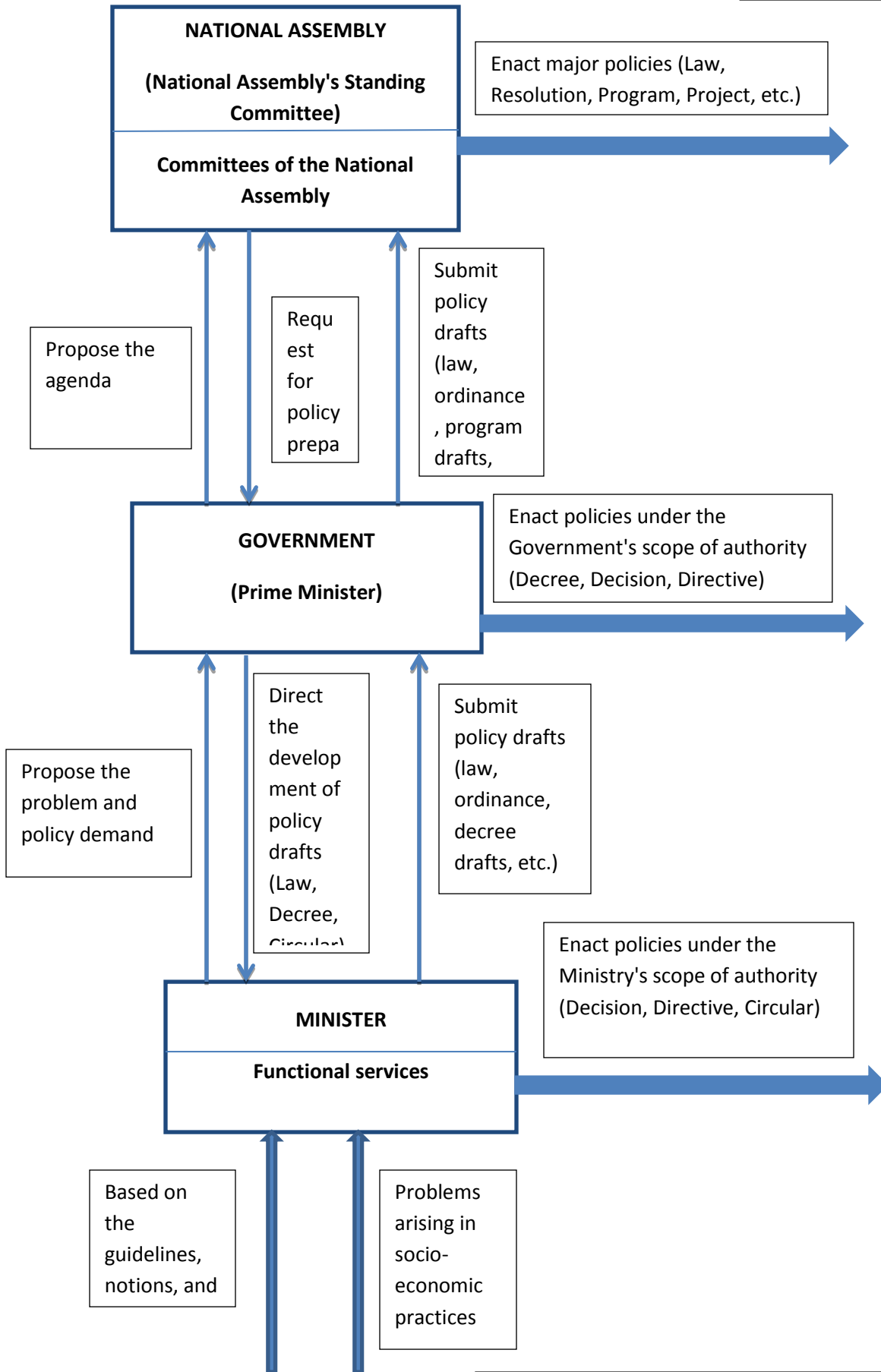
6) The National Assembly/NASC perceives the significance of the problem and assigns the Drafting Committee/functional ministry to prepare the policy.

7) The Drafting Committee (normally chaired by a ministry in collaboration with relevant ministries) or Ministry in charge of relevant field prepares a policy draft.

8) The Functional service leads the preparation and coordinates with other services, ministries, or industries to prepare a draft and submit it to the Minister/Drafting Committee for review.

9) The Drafting Committee/Minister submits the policy draft to the Government.

10) The Government reports to NASC to introduce the policy draft into the agenda of the National Assembly.



**Figure 3. Public policy development process**

11) The National Assembly reviews and adopts the policy, or requires the Government to further revise before adopting. The National Assembly may refuse to adopt the policy.

In fact, policy formulation process may skip several steps from case to case. For example, if a policy problem is perceived by the National Assembly and preparation is assigned to the Ministry, initial steps can be skipped.

Aforementioned process is carried out through such organizations as Ministries, ministerial services, Government, Prime Minister, National Assembly, NASC, and committees of the National Assembly. Also, this process can engage the participation of social-politic organizations and communities.

In practice, organizational model of policy design in Vietnam is as follows (Figure 4).

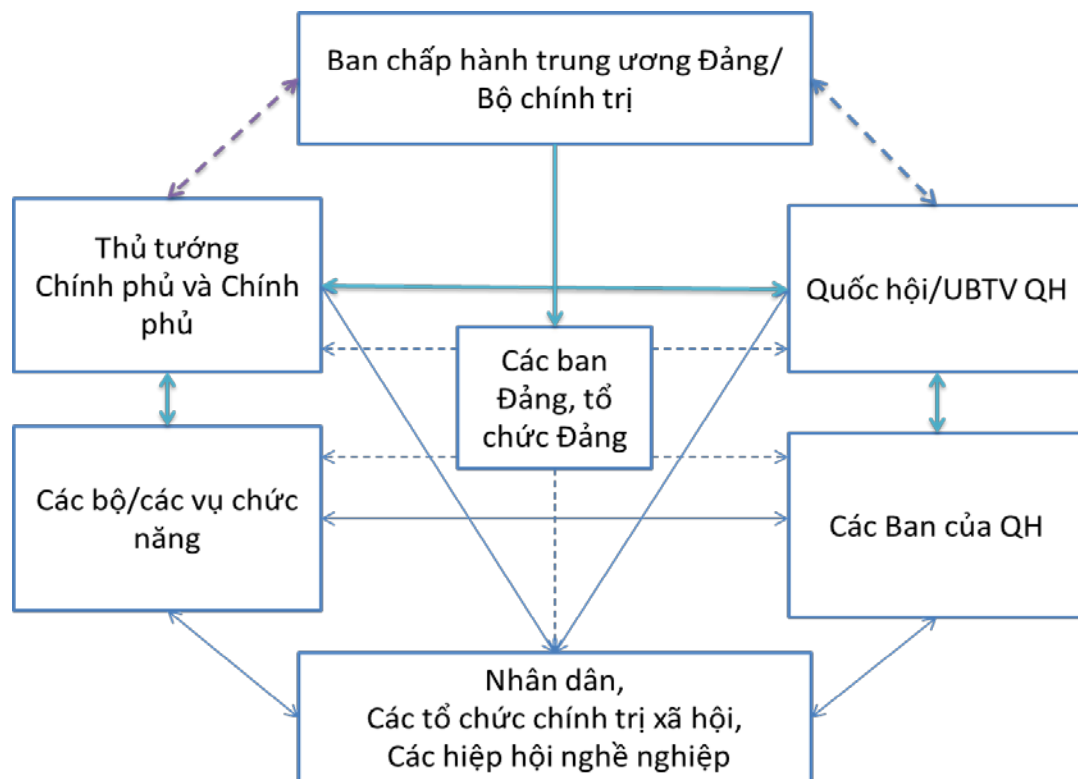


Figure 4. Organizational model of public policy design in Vietnam

In the above model, the relations between the Government and ministries and industries, and between the National Assembly and its committees, are internal relations that are strictly and thoroughly formed and regulated by specific

legal regulations. The relation between the Government and National Assembly is that between legislative and executive ones that expresses a relative independence, but it is the key relation for a policy to be reviewed and enacted. There are mutual relations between Ministries and Committees of the National Assembly in which the ministries are responsible for interpreting policy drafts or finalizing the policies as required by such Committees.

People and social-politic organizations and professional associations may be the source of bringing policy problems to the attention of ministries, industries, Government, National Assembly or its committees via different channels.

Among the Government, National Assembly, and people and social-politic organizations, there may exist ad-hoc relations when people's opinions are consulted for purpose of policy drafts. Committees of the National Assembly as well as Ministries are direct agencies assigned by the National Assembly and Government to review and collect these opinions for purpose of improving the policy drafts.

Communist Party of Vietnam doesn't actively participate in designing a policy, but in the context of Vietnam, Party organizations hold the role of directing state agencies that prepare and adopt the policies. This role is reflected as follows: It makes sure that established policies follow the guidelines and policies of the Party and ensures the union between legislative and executive agencies in the policy formulation process. Directions of the Party are carried out with following specific contents:

- The Party sets out notions, guidelines, strategies, and resolutions and directs State agencies to institutionalize them into policies and laws of the State.

- Through its party members that are serving in the state system, especially those holding leadership roles in the system, as well as party organizations in the agencies, the Party directs operations of state agencies in the policy design process.

- Through specialized agencies of its system, the Party monitors state agencies to organize the design of notions and guidelines of the Party into policies and laws.

- When policies are submitted to the Government and National Assembly, through its party members that hold key positions in the agencies, the Party directs the review, selection, and approval of policies.

- Through its promotion and dissemination, the Party encourages social-politic organizations to participate in contributing their opinions to policy drafts.

- In case of any problem or dispute in the design and approval of policies, state agencies may consult higher-level party organizations for directions to resolve such a problem or dispute.

Basically, the organizational model of public policy design in Vietnam is a reflection of core requirements for public policy formulation:

- The public policy designing and enacting entity is the State.
- Executive agencies are mainly responsible for preparing public policies
- The enactment of major public policies of the nation must be authorized by the National Assembly.

- The design of public policies involves the participation of people and social-politic organizations.

- Public policies are the concretization of the guidelines, strategies, and resolutions of the Communist Party of Vietnam.

### **1.5. Environments influencing policy formulation**

Policy formulation is associated with certain environments that dominate over the birth of each policy. It is impossible to fully understand the policy formulation process if we separate it from the environments in which a policy is formulated. These environments have an influence on the design of policies, selection of policy problems, determination of objectives, as well as policy development means and methods. The below sections will look into environments that have an influence on the policy formulation process.

#### ***1.5.1. Political system***

Political system of a nation reflects the relations between classes and parties, including political parties and influencing groups. The competition among parties and robust fight for advancements, dominating powers, influencing control, and party positions has created the political environment in such a nation. But, actual political power concentrates in hand of political party (or a party union) that is ruling in the respective period. Therefore, the introduction of a public policy will be greatly influenced and directly dominated by the political system that is holding the leading role in terms of guidelines and decisions on the development of a

nation. The political system forms a policy predisposition that is the concretization of notions and directions of the political system. The differences in political systems create the differences in contents and policy making means for the same event. The higher value of a public policy is and the more it is supported, voluntarily followed, and implemented by the community, the stronger and more consolidated its political foundation will become, accordingly.

The political system of a nation can be expressed in following aspects:

(i) Political culture: political perception of policy makers and their public mass has a direct influence on their thought and behaviors on policies. Because the means and development of different nations are different, political notions that dominate such development are different, too. Political culture of each nation creates demand and requirements and dominates the orientations and contents of policies enacted.

(ii) Political institution: organizational form of the political institution has a major influence on the policy formulation process. Party organizations in the society, roles and operational manners of the ruling party, and division of power among parties will dominate policy formulation and decision making processes in each nation.

When it takes over ruling position, a party will develop an ideology foundation with political orientations. That will be the basis for the State to develop its administrative policies. It can be said that political guidelines will decide the contents of policies as well as the selection of policy options.

In Vietnam, the Communist Party of Vietnam is the ruling Party, and by means of legal instruments, the Party sets out guidelines and common objectives for the nation development. The State develops policies to institutionalize such ideology and bring such guidelines and policies of the Party into practice. This is considered as the pre-requisite basis of public policy formulation.

### ***1.5.2. Socio-cultural environment***

Social environment is a summary of human relations. They are rules, institutions, commitments, regulations, covenants, etc. at such various levels as:

nation, provinces, districts, agencies, villages, communes, families, groups, teams, political organizations, union organizations, etc. Social environment orients human activities toward a certain framework, which creates community power that facilitates the development of each individual and community as a whole. Social environment reflects the diversity and complexity of external social lives that has an influence on and normally regulates and even decides the appearance, nature, personality, and transformation trends of the community and each individual.

Cultural environment with such facets as customs, traditions, lifestyles, ethical trends, awareness of laws, standards of people's knowledge, dynamic or conservative levels of a society, etc. which are the conditions, bases, and contexts for the formation of personality and development of individuals, groups, or community.

Public policy formulation is inseparable from socio-cultural environment that has been forming the characteristics, values, and belief in each community. While a policy is developed in a standard manner, it is not welcomed or supported if it is not considered from a unique socio-cultural view.

If social environment is at incremental level, it is possible to suggest policy solutions based on self-awareness of the people, which, in turn, are supported by them and avoid from being constrained by negative social factors. Socio-cultural environment is a very important condition that has an influence on the success of a policy. Therefore, in formulating a policy, it is necessary to consider which social factors have an influence on such political areas and which social factors may arise in implementing such a policy.

### ***1.5.3. Economic environment***

Economic environment reflects the development of production force and production relations in a nation. Economic environment in current context reflects the development of a market economy with its institutions and components of the economy, economic mechanism, and roles of the state in economic administration. Economic environment gives an insight into the level and economic potential of a nation.



Certainly, economic environment is a decisive factor that has an influence on contents of economic policies to be formulated in each period. But, economic environment also has a considerable influence on public policies of the state in general.

Each proposed policy must be based on specific economic circumstances and may not go beyond the scope of available economic conditions and resources. At macro-level, economic conditions indicate the development of the economy, economic growth, development, and growth demand of the areas which are influenced by the policy.

Formulating a policy is dominated by economic environment for the fact that not only economic resources are used for implementing the policy, but also existing economic institutions regulate the function of policy formulation process. When a policy is formulated, it is necessary to identify which economic factors have an influence on areas to which that policy is introduced, and economic impacts that may arise from policy implementation. The consideration of these economic factors will make sure that the proposed policy is feasible under existing economic conditions.

#### ***1.5.4. State administrative and institutional environment***

State administrative and institutional environment is understood as including all of state administrative agencies and the whole system of statutory norms and documents that form a legislative framework for state administrative agencies to perform their functions of managing and monitoring all aspects of social life, as well as regulating relations in economic activities and internal and external relations of the state administrative agencies.

The organization of state administrative system, operational mechanism of the system, relations between agencies of the state system, existing regimes on public services and servants, etc. have a significant domination over the public policy formulation process. A state system that functions smoothly and professionally with scientific work flows and effective interactions between its organizations will facilitate conditions for a smooth policy formulation process. On

the contrary, if it functions in a delayed, non-standard, and unprofessional manner, then policy formulation will be interrupted and fail to meet required principles, and, as a result, quality and effectiveness of an enacted policy will be limited.

Statutory system also has a considerable impact on policy formulation. Statutory system forms the legislative framework that regulates and adjusts all of social relations. Public policies are enacted by the state; therefore, they must be based on existing statutory system. Statutory institution has an impact on policies by means of shaping the manifest of problems and specific solutions, as well as regulating a framework for selection of solutions and methods to implement those solutions. Statutory institution provides the policy formulators with rules of action, standards of policy development, constraints, and framework for the policy. In other words, policies may not be against existing provisions of laws. This means when a policy is formulated, it is necessary to know all of laws or ordinances that are regulating the areas related to such policy.

In the meanwhile, a policy is the source of formulating new legal institutions. Normally, when the state enacts a policy, that policy is institutionalized into legal norms that are both encouraging and mandated on the implementation of that policy.

#### ***1.5.5. International environment***

In the international context of expanding multilateral relations, policies of a nation must be taken in consideration of external factors and international relations with other nations in the region and world.

Political and economic context of the world has an indirect and direct impact on the operation and development of each nation. Therefore, policies of a nation should not only be reduced to and dominated by its internal factors, but also take external impacts into account. Sometimes, impacts caused by international environment change domestic policies in a significant manner. A policy is only stable in a stable and peaceful environment. Under changing conditions, a policy requires the flexibility and consideration of different practical scenario.

The impact and influence of international agreements on policy development must be always taken into account. A policy, whether at micro-level or macro-level, of a nation is always within a consistent system. That system is developed based on legal adjustments and international conventions which the States sign to agree with. This is the condition for policies to conform with trends and ensure long-term stability.

### **1.6. Necessity of policy formulation innovation in the context of Vietnam**

Basically, the organizational model of public policy design in Vietnam is a reflection of core requirements for public policy formulation:

- The public policy designing and enacting entity is the State.
- Executive agencies are mainly responsible for preparing public policies
- The enactment of major public policies of the nation must be authorized by the National Assembly.
- The design of public policies involves the participation of people and social-politic organizations.
- Public policies are the concretization of the guidelines, strategies, and resolutions of the Communist Party of Vietnam.

In fact, however, aforementioned policy design model raises following problems:

-- The selection of policy formulation model in a traditional manner clearly reveals many limitations. It can be seen that existing policies formulated in Vietnam are mostly based on data collected and reported as required by the policy formulators. It is easy to see that most of formulated policies only pay attention to problems at industry, sector, or local level, but fail to have a comprehensive coverage and general assessment and lack a synchronous collaborating mechanism to ensure the harmony. Many policies are developed in an emotional, subjective, and bias manner that receives many critical public opinions as a response. For this reason, while policies formally developed by the state, they are individualized and

characterized by each industry, sector, and region. This results in many overlapped, asynchronous, and inconsistent policies, and there are cases when policies of an industry, sector, or region are even obstacles to the development of another.

- It can be guaranteed that a policy is developed as a process, but rather just a process-like. Developing policies is mostly intended to resolve on-going situations by means of simple technical or administrative measures. Accordingly, a policy that is developed instantly and quickly may ease pressing public opinions. In the long-term and stability, however, such a policy is not guaranteed. Policies with long-term vision and macro-level coverage are lacked.

- There are more and more sub-level policies. Behind those policies, limitations and weaknesses of the policy formulation process are revealed. Although policies are the reflection of ideology and will of the state, policy formulation is carried out by public servants of state system. A non-standard, subjective perception and awareness of responsibilities of these people in policy development process may even result in unforeseeable consequences as policy is created.

- People's participation in policy design process is not common and active. Typically, policy preparation is chaired by a Ministry mostly through the staff of public servants in its function services. In spite of their professional management knowledge and experience, it is difficult for this staff to cover all facets of the problem in question; therefore, a few public policies are actually unsuitable to the demands of life. Most of policies are developed with limited participation of enterprises. Enterprises may only give their opinions after or upon arising any problem. Therefore, engaging people to participate in the policy design process is an important factor that decides the rationality and feasibility of a policy.

- The relations among ministries and between ministries and localities are loose. Many public policies are relevant to the operations of certain ministries, industries, and localities. Thus, it requires the coordination among them right initially in the policy design phase. In fact, however, the coordination among ministries largely depends on their divisions and even public servants that are assigned to participate in this process. If a public servant doesn't have sufficient

authorities and knowledge, or representing the ministry, his or her opinions may sometimes be of no practical value.

- The relations between legislative and executive agencies in the policy design process are loose. In fact, the Government is the entity to propose and develop basic policies to submit to the National Assembly for decision, and it is also the proposer and developer of nearly 95% of law projects to be adopted by the National Assembly. Nevertheless, in the legislation under current institution, operations of the Government and National Assembly are still separated and even independent of each other. Normally, a program draft or law project is inspected by Committees of the National Assembly only when it is submitted to the National Assembly by the Government. This results in a situation in which a law project proposed by a ministry or industry is of local nature (within its scope of administration) but is incompatible with general interests, or overlaps with the scope of others.

Now, it requires a more appropriate notion on and approach toward public policy development in Vietnam to, on one hand, resolve existing limitations in the current practices of policy formulation and, on the other hand, ensure the responsiveness in the integration process. The globalization trend and integration context have placed Vietnam in front of many opportunities and challenges. Political notion and management thought, as well as the will of the state, are reflected right in the system of enacted policies. Innovating the policy formulation in a synchronous manner with innovating steps of the policy process in Vietnam is inevitable. Innovating public policy formulation is to increase inherent values of the policy, and its core foundation is to strengthen the efficiency and effectiveness of state management activities.

## Chapter 2

### DETERMINATION OF POLICY PROBLEMS

#### 2.1. Overview of policy problems

##### 2.1.1. Policy problem definition

According to David Dery: “Policy problem is defined as unrealized needs, values, or opportunities for improvement that may be pursued through public action”<sup>11</sup>.

According to James E. Anderson, “a policy problem can be defined as a condition or situation that produces needs or dissatisfaction among people, and for which the relief or redress by governmental action is sought”<sup>12</sup>

Policy problem is a conflict that arises in the socio-economic life, or a need for changing current situation that requires the state to enact public policies to resolve in accordance with desirable objectives.

There are numerous problems arising in daily life of the society, many of which result in negative, undesirable impacts on a certain group of people or social community as a whole. In fact, however, only a part of those problems become policy problems. For an existing state to become a problem, it requires a common standard or measure of value to be able to determine which matter is irrational and unacceptable and requires Government interference. For example, if traffic accident occurs frequently and everyone feels that there is no urgency about it and that it is normal and unavoidable, it will not become a policy problem.

In summary, an existing state will not become a policy problem when:

- It is uncommon.
- It is nonpublic, but just occurs with a single or several small groups.
- It is unrepeatable.

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<sup>11</sup> David Dery: Problem definition in Policy Analysis, Kansas, 1984.

<sup>12</sup> James E. Anderson: Public Policy Formulation, Reference materials, Master Program of Public Policy, National Academy of Public Administration, Hanoi 2015, pg. 127.

- It causes no material damage to public interests.
- It raises no worry among the majority of people, etc.

As such, a policy problem must be an existing state that raises concern about loss of benefits, disturbance, or disbelief among the majority of people, leading to their demand for a solution to that state to ensure a safe life and legitimate benefits of the community. That existing state raises a sense of urgency in the society, and then attracts the Government's attention.

Nevertheless, if the state manages to attract the government's attention due to the sense of urgency in the society but the government is unable to resolve it, then it will not become a policy problem. For example, a storm or tsunami can never become a policy problem because the Government can do nothing about it. Aaron Wildavsky said that, "A problem is only a problem when something can be done about it."<sup>13</sup> The government cannot prevent a storm or tsunami from happening, but it can do something to prevent the people from loss, distress, or damaged properties as a result of such a storm or tsunami with its assistance programs, by constructing an early warning system to prevent from damages, etc. In this case, the difficulties faced by the people in the aftermath of a storm or tsunami may become a public problem.

### ***2.1.2. Problem origin***

A policy problem may originate from many different backgrounds in the social life. There are always problems arising in the reality itself - needs, demands, or dissatisfaction of the public that require government interference. It is possible to generalize origins of problem into four basic categories as follows:

*First*, inherent defects arising in the market economy. On one hand, market economy has promoted the potentials of capital, assets, science and technology, and management to develop production industry of the society in a dynamic and effective manner; it, on the other hand, contains defects that result in negative impacts on the socio-economic life. Those defects are:

- Unfair competition and monopoly: means competing using shady means, price monopoly, market manipulation, etc., that requires the state to take measures

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<sup>13</sup> Aaron Wildavsky: *Speaking truth to Power*, Boston: Little. Brown, 1979, pg.42.

to prevent from the abuse of monopolistic power to result in ineffectiveness of the economy.

- Incomplete market: means a situation in which the market neither produces nor supplies the products desired by the consumers, reflecting a misleading investment and increasing market instability.

- Exogenous factors: means the scarcity of natural resources (land, minerals, water, air, etc.), inappropriate use of these resources, environmental pollution, unsafe food and drink water, leakage of radioactive substances, etc. that have a considerable impact on economic activities as well as social life.

- Asymmetry of information: means a situation in which a party holds information but hides it for personal benefits, causing damages and losses to other entities in the socio-economic life.

- Production and consumption of hazardous goods: for profit purpose, some organizations or individuals produce, trade, and offer to the market the goods which cause harms to the consumers such as drug, hazardous chemicals, etc.

- Poverty and inequality: the market economy always leads to the deeply increasing gap between richness and poverty, the inequality of assets and income leads to the concentration of property in few people while the majority of people in the society become impoverished.

Aforementioned market defects result in many problems that have a negative impact on the socio-economic development and the life of many people, which requires the government to interfere with its public policies.

*Second*, natural conditions. Unfavorable natural conditions that have a negative impact on socio-economic life will raise problems that require state interference. Natural disasters, storm and flood, drought, or consequences of ongoing climate changes may result in profound adverse effects on the people. State interference to prevent from and mitigate these adverse effects has become more and more urgent.

*Third*, weaknesses of the state itself. In addition to market defects, the state itself cannot avoid from demonstrating some weaknesses in the course of its function. These weaknesses are caused by following reasons:



- Lack of competition in the operations of the state system. Because of preferential conditions and support offered by the state to its organizations, state enterprises usually do not have to compete like private enterprises and organizations do. The lack of competition results in the ineffectiveness of these organizations or enterprises as they are usually supplying the society with what they have instead of what the society needs.

- Bureaucracy in the operations of the state system. State system functions in a systematic and hierarchical manner with numerous regulations and many levels. In many cases, these regulations are rigid and cause many troubles while a heavily hierarchical system leads to bureaucratic work flow and results in disruptions and obstacles to activities of organizations and individuals in the society. The bureaucracy is also reflected in the maintenance of a bulky, heavy, inflexible system; bureaucratic, demanding, and troubling attitude of the staff of public servants.

- Threats of corruption committed by officials of the state system. Holding the power to represent a state and having the control over a considerable amount of assets and budget of the state, state officials may abuse their positions and powers for personal interests.

- The subjectiveness and voluntarism that is non-compliant with operating rules of the market. In many cases, the government implements system in a subjective and voluntary manner that is incompatible with movements of the market and objective rules. This does not promote social development but also results in negative impacts that bring the economy into a holdup and delayed situation with many conflicts and urgent problems in the socio-economic life. For an instance, the fact that the State maintained a bureaucratic subsidy regime for a long time has caused many obstacles to business production and resulted in severe disputes in the society.

Weaknesses of the state in its operations also lead to many problems that must be resolved by state policies so that operations of the state better satisfy people's needs and its survival is guaranteed.

*Fourth*, the process of developing and implementing socio-economic development strategies and plans at national, industrial, and regional levels. To

orient the development of the nation as well as each sector, industry, and region, the government and authorities of different levels must set out socio-economic development strategies and plans. These are the guidelines for socio-economic development in a long-term that are used to formulate the framework and solutions to achieve strategic objectives. That process of developing and implementing the strategies will raise new problems associated with the means and tools of strategy implementation as well as impacts and consequences of this process.

*Fifth*, globalization process. Nowadays, globalization has become an increasingly robust process. It makes each nation become an organic part of international economy and brings many socio-political problems into common attention. Globalization leads to the occurrence of external problems and conflicts with existing domestic situation, and creates many challenges that each nation has to face with. The development of multinational corporations, execution of international treaties, and price dominance in international markets, etc. will result in problems that require each State to take responsibility to resolve in order to protect socio-economic-cultural development of its nation.

### ***2.1.3. Policy problem classification***

Policy problems may be classified by sector into such categories as follow: economic problem, political problem, or social problem. For each sector, the classification may be further divided, such as: agricultural problem, traffic problem, commercial problem, and so on.

Based on competent authority that resolves a problem, it can be classified as a national (protection of national sovereignty, multi-component economic development, etc.), local (local economic structure, local traffic, etc.), or organizational (organizational personnel, etc.) problem.

Based on time estimated to resolve a policy problem, it can be classified as a short-term problem (less than 1 year), e.g. rearranging organizational personnel, medium-term problem (less than 3 years), e.g. improving the infrastructure of a district, and long-term problem (over 3 years), e.g. poverty reduction, education reform, etc.

Based on the subject that is influenced by a problem, it can be classified as a problem with wide influence on many people (environmental pollution, secondary

education), problem with influence on certain groups (traffic jam in a metropolitan), and problem with narrow influence on certain groups (drug addiction).

Based on the complexity of a problem, it can be classified as a highly complex problem (administrative reform), medium-level complex problem (high school exam reform), or little complex problem (renovation of a road).

The classification of policy problems is the basis to determine at which level and in which legal manner a problem should be resolved. For example, the problem of poverty reduction should be addressed and resolved at national level by means of a long-term strategy on poverty reduction. The problem of improving traffic conditions in a district may be resolved by district-level authority by means of approving and carrying out a project.

## **2.2. Identification of problems and determination of the demand for policy**

### ***2.2.1. Criteria for identifying policy problems***

- The problem has an influence on majority of people: a policy problem must have an influence on the majority of people and public community. Therefore, it is necessary to differentiate from personal problems. A problem that occurs with a small number of individuals is a personal problem. A problem that has an influence on the community will affect the majority of people in the society and result in loss of benefits and adverse effect on their mental state and belief. In this case, such a problem should be considered and determined as a policy problem.

It should be noted that, however, such a determination may not be correct even if the problem occurs with the majority of people. It is sometimes a result of crowd effect or public manipulation for interests of several individuals, which will not reflect the nature of a problem. Therefore, one should seek the motivation behind each group behavior; otherwise he or she may perceive and evaluate a policy problem mistakenly.

- The problem is serious: Serious problems are those that cause great and considerable damages to social life. But, which is a serious problem?

Firstly, it is an existing situation that is against current laws. The problems that challenge current legal system should be paid attention to because they will break the solemnity of laws and make state administration become invalid.

Secondly, such a situation has an influence on existing founding values of the society. Founding values forms the culture of a society and constitute believes, ethics, and truths to be widely acknowledged by everyone. Therefore, existing situations that violate such founding values will have a great impact on the culture, belief, and ethics in the society.

Thirdly, such a situation challenges the integrity and security of the community. A phenomenon may present dangerous threats to social security, lives and properties of living people in the society, and profound unsafe situation in the society. For example, an increasing situation of robbery and theft with savage actions will cause a serious impact on the security and safety of social life.

- The problem causes a sense of urgency and concern in the community: A problem will not become a policy one if most of the stakeholders have no sense of urgency, or do have but do not plan to express it. When an existing situation become so urgent that it worries people very much, they may even react. Urgency and reaction are the manifest of the fact that the problem should be paid attention to and addressed as a policy problem.

- The problem is publicized to generate a collective reaction: in most of the cases, a problem only becomes a policy one when someone raises it to become a common problem. For example, the problem of adverse effects of environmental pollution that cause increased cancer diseases in a region is mentioned on an article, and then it attracts social attention and leads to reaction of majority in the society. It should be noted that, however, such a situation only becomes a policy problem if such an article actually generates the agreement and similar reaction in the society. If it is just like a rock thrown into a lake and sunk to the bottom, it will not be publicized and become social need.

- The problem potentially develops into a significantly negative situation in the future. There are existing problems that are not serious but may potentially develop in accordance with future changes to result in very serious, irremediable consequences in the future. Such problems should be considered immediately and

policies should be developed beforehand to deal with them before they become serious in the future. An example of such a problem is urban planning or urban landscape layout, etc.

### ***2.2.2. Means of identifying policy problems***

A policy problem can be identified by following means:

+ Public servants identify a problem in discharging their duties. Each public servant is usually assigned to manage or participate in managing a certain area under state management responsibility. In discharging their duties, public servants are those that have the most specific knowledge of what are going on within their scopes. Therefore, when a problem appears and becomes urgent or unsound in practice, public servants can quickly identify this situation. When the problem becomes serious and receives attention, public servants need to report to upper levels for solution. Identifying a problem as reported by public servants in discharging their duties is the shortest way to the introduction of a policy.

+ Common people file complaints about a problem. Sometimes, the public is so discontented with a problem that it attracts the attention of public servants or state authorities. This discontent is reflected by complains and reactions from common people. When such a discontent rises and even leads to negative effects on the society, the State should take into consideration of which problem it is, and whether it is necessary to enact a policy to resolve such a problem if any. For example, a complaint regarding wastewater causing pollution and influence on the lives of common people will require the government to consider the severity of which and causes thereof, and possibly enact a policy to resolve such a problem.

+ A problem is identified by public media. In today's society, public media has become a considerable role-playing force in the social life. Every problem arising in the society may be quickly spread over means of public media, especial on social networks and via the Internet. Thanks to modern information technology, this information can be quickly spread and cause wide reactions in the society. This is a fast mean of identifying problems that public servants and state organizations should take into consideration.

+ Top-down assigned duty. Policy problems can be identified by functional agencies in the state system when they are assigned to do so. Problems of this kind are usually related to reforming ideas of the state for purpose of developing the socio-economy or reforming operations of the state to meet new demands.

### ***2.2.3. Identification of policy problems***

Policy problem identification is the consideration and formation of a problem in a clear manner and determination of its name.

Policy problem identification comprises of following contents:

- Consider expressing aspects of an existing situation. A situation may express itself with different aspects; therefore, it is necessary to consider all of these aspects to have a clear identification of the problem. For example, a poverty situation may express with following aspects: low income, food shortage, cramped and improper living place, lack of access to basic services such as education, medicine, living water, etc.

- Diagnose causes of the situation. An existing situation may be considered as a problem if it attracts attention from many people, but which are the causes of it? Relevant public servants of the state in this area should look into facts to diagnose causes of the problem. Causes of a problem are factors that result in such problem. Literature review, practical survey, and interview with people suffering from consequences of the problem can help with preliminary diagnosis of causes of the problem. To identify causes of a problem, it is necessary to answer the question: “Why does that situation exist?” However, it is important to differentiate from causes and symptoms of a problem. Symptoms are external expressions of a problem while causes are factors creating those symptoms. For example, traffic jam situation may have such symptoms as many people and vehicles participating in the traffic flow, but its causes are narrow road system with many intersections and poor traffic attitude, etc.

- Propose policy problem name. The name of a policy problem is a short manifest of an existing situation that has become urgent in the society. A problem name is also popularly mentioned by the people when they express their discontent with the situation. A situation may be viewed from different aspects depending on the knowledge, experience, and perception, etc. of different subjects. But, the name

of a policy problem is usually regarded as a popular, easy-to-understand, and fully reflected situation viewpoint. For example, an existing situation that husbands hit wives or parents hit children can be identified as a form of family violence; a situation that children have to attend many classes, especially after-school ones that parents volunteer to enroll their children in or are required by teachers, which results in the overload and distortion of education, can be regarded as the problem of extra teaching and learning, etc.

#### ***2.2.4. Determination of the demand for policy***

There are numerous problems in the daily life that may result in undesirable impacts on the society. However, not all of them are addressed by policies enacted by the State. Determining the problem to which the State should pay attention to enact a policy is very important. Assessing above-mentioned existing situations is the process of determining the society's demand for policy.

Society's demand for policy is a public demand, expressed in one or another form, for a solution to the problem of interest that the government must respond with a solution by enacting a public policy.

Therefore, a top priority to define a demand for policy is differentiating existing situation of a person from that of the community and its agreement on demanding the government to resolve the problem of interest. In the past, for example, inebriation was considered as a personal problem of the individual and his or her own family. Today, however, inebriation has become a social problem because it may result in negative, undue, and even dangerous behaviors if the drunken person commits an offensive or violent act toward surrounding people, especially when he or she is driving a vehicle on the road. Therefore, the society is urgently demanding that this situation should become a problem and the Government must take a solution to prevent from and handle this problem.

To assess the demand for policy, it is necessary to consider following contents:

(i) Identify the subjects to be influenced by the policy problem. Clarify the subjects to be directly and indirectly influenced by the policy problem. For

example, smoking problem has not only a direct influence on the smokers but also an indirect influence on surrounding people.

(ii) Clarify the scope of influence of the problem. Each problem may have a different, wide or narrow, scope of influence. Problems with a wide and serious scope of influence should be paid more attention by the authorities. While the problem of lacking bridges across rivers for trespassing people has a local scope of influence only, the problem of burning forests not only causes imminent damages but also result in long-term effects on living environment of many people.

(iii) Define the consequences of the problem without a policy:

In fact, some problems may cause no considerable consequence without a policy thanks to socio-economic development itself that eliminates the problems; on the contrary, some may result in considerable outcomes if the government does not enact policies to resolve them. Therefore, public servants or entities that propose the policy problems should define the consequences thereof without a policy, specifically:

+ A preliminary estimate of consequences and influence of the problem without a policy. Based individual knowledge of and experience with relevant problems, documents and information on the problems, and on-site investigation, it is possible to prepare a preliminary estimate of consequences of the problem without a policy of the Government. In some cases, the problem becomes so severely that it even leads to more problems and the consequences thereof will be greater. It is very necessary to forecast potential consequences so that the government can have a clear perception of the severity of the problem.

+ Review existing policies with respect to resolving the problem. Before making a proposal on developing a new policy to resolve the problem, it is necessary to review existing policies relating to the problem, looking for any existing policy that is addressing the problem, and if there is, then how effective it is on the problem, to determine whether to enact a new policy to resolve the problem or supplement existing policies to do so. If the problem hasn't been



addressed by any policy, the arguments on severity of the problem as well as its consequences and scope of influence will be a conclusive basis to persuade competent authorities for purpose of enacting a policy.

(iv) Define the requirements that the people expect of the government. Defining the demand for policy should be specified with another step by forming the people's expectations of the government. This is an early formation of objectives that the policy problems are targeting. For example, the situation of extra learning among children makes parents expect that secondary education program will be reformed and extra teaching regime will be controlled while class teaching quality will be improved.

### ***2.2.5. Policy problem reporting.***

Public servants in charge of the area of interest will identify the problems, define the demand for policy, and prepare a primary report of policy problems and submit it directly to competent authorities for solution. Such a report may be brief and comprise of following contents:

- + A description of the urgent situation,
- + An early diagnosis of causes of the situation
- + Proposal of problem name
- + Identification of influenced subjects and scope of influence of the problem
- + A forecast of consequences of the problem
- + A reflection of situation without any policy in force addressing the problem
- + A presentation of people's expectations of the government with respect to resolving the problem

The early report is intended to raise a matter to the government that a situation is existing and becoming urgent in the society, and that its consequences may be significant if the government takes no necessary intervention action; therefore, the government should consider including the problem in the agenda.

## **2.3. Inclusion of problems in the agenda**

### ***2.3.1. Overview of policy agenda***

When a problem attracts the attention of policy makers, it may then be included in the agenda or policy agenda.

Policy agenda is a list of all of social problems that have been arising which the government is required to carry out solutions to resolve in a specific period of time.

There are following types of an agenda<sup>14</sup>:

Common agenda: it comprises of problems associated with regular administrative policies of the government, daily and ordinary affairs and operations that the state must handle. Problems of this type are related to urban life, public security, education, tax, crime, land, employment, electricity, water, environment, food, commodity, etc.

Agenda for political problems: it usually comprises of problems of the interest among politicians and parties rather than among common people. There may also be problems originating from common folk. But, when they are included in this agenda, they become certain threats to the political stability of the government. Usually, only events directly related to political life or the organization and survival of the government may be included in this agenda. Those problems include those of the state system itself, personnel of state organizations, inefficiency of state operations, human rights, democracy, decentralization of power, sensitive diplomatic relations, etc.

Secret agenda: comprises of problems within the functions of the State that can not be publicized. Most of problems in this agenda are related to security, strategic intelligence, national defense, or diplomatic affairs, etc. Characteristics of this agenda are: problems are reported by special task forces in the government; recipients of reports are some key leaders; discussing on problems which are kept confidential within the scope of certain key leaders and experts from special agencies; policies and solutions, if so enacted, will be kept confidential for a very long-time.

### ***2.3.2. Process of including a problem in the policy agenda***

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<sup>14</sup> Le Vinh Danh, U.S. Public Policies during 1935-2001, Statistic Publishing House, 2001, pg. 241-243.

Including a problem in the policy agenda is carried out by an agent of the government who has duties to bring the problem into the policy agenda and presents arguments to persuade competent decision-makers of the agenda. A problem is actually included in the policy agenda when individuals or a group of individuals with authority reach an agreement to address such a problem in the list of problems to be considered for solutions in foreseeable future.

A problem can be easily included in the agenda if it is proposed by person at a high-level position in the government. Those problems that are proposed by the ruling party in agreement with proposals by the national assembly or government will be easily accepted as a part of the agenda. Politicians with significant powers and voice can also bring a problem into the list of discussion in agenda of government at different levels.

There are cases, however, that many problems arise from lower society in which people are not adequately paid attention to by the government. To be able to include such a problem arising in the society in the policy agenda in a “bottom-up” approach, it must go through following steps:

- Public servants monitor the fields for any policy problem, report existing situations to agency leaders, and provide information on urgency of the problems.

Leaders

- Agency leaders consider the significance of policy problems. If the problems are significant, they will report those problems to higher-level authorities (ministry or local government levels).

- Higher-level authorities consider the problems and assign agency leaders to conduct a preliminary study on the policy problems if they are significant.

- Agency leaders direct one or more specialized public servants to be responsible to conduct a preliminary study on policy problems, including identifying policy problems, preliminarily defining demand for policy, and forecasting potential consequences. Results of a preliminary study will then be reported to agency leaders and higher-level authorities.

- Higher-level authorities will report to competent authorities to resolve the problems and propose to include them in the policy agenda. The problems will

then be considered by competent authorities and if they are accepted to be included in the agenda, they will be further studied for purpose of enacting policies.

Typically at competent authority level, there will be a public servant or assistant to the governmental council to perform relevant duties and organize the agenda. Organizing the agenda is important to persuade those participating in the discussion on the agenda. Problems must pass through following phases to be included in the agenda:

(i) Summarize and classify the problems: A problem proposed to be included in the agenda must meet aforementioned conditions, i.e.: the problem has an influence on majority of people; is serious; causes a sense of urgency and worry in the community; generates a collective reaction if it is publicized; and potentially develops into a significantly negative situation in the future. If a problem fails to meet aforementioned conditions, it will not be included in the agenda.

From these, it is necessary to classify problems into different categories. Problems may be classified into common agenda, political agenda, or secret agenda. For each agenda, it may be further classified by specific field that the problem arises from and exists in: education, medical, urban, etc.

Organize agenda problems in a priority order:

- Priority is given to problems arising from the implementation of enacted policies if the urgency thereof is equal to that of new problems because such problems are usually caused by the government itself which should be resolved as soon as possible.

- Priority is given to problems of the public with more serious consequences compared to existing events or situations of the same problem category.

(ii) Arrange the procedures and timeline for adoption of the agenda: To prepare for the meetings on discussion and adoption of the agenda, it is necessary to arrange problems to be considered and required time for each problem. Typically, the procedures for introducing problems in a meeting are as follows:

- Problems under secret agenda should be addressed first, then those under common agenda and, finally, those under political agenda.

- For each agenda category, problems of wider impact should be addressed first because they have an influence on a wider range of people and should receive more attention.

- For problems with similar impacts under the same agenda category, those with clear, sufficient arguments should be addressed first.

- If problems under the same agenda category have similar impacts and arguments, those relevant to former policies should be addressed before new problems.

- Shorter, briefer, and less time-consuming problems should be addressed first while problems that require more time for explanation and discussion should be addressed later.

In the discussion process, it is necessary to manage time to consider all of problems in a required amount of time for discussion with respect to each problem so that no problem is spent too much time discussing on while another lacks necessary time for discussion. To do this, qualifications and experience of the meeting chair is very important to lead the meeting effectively.

(iii) Check again contents of the problem before presenting: When a problem is proposed to be included in the agenda, in principle, it must be attached with preliminary solutions. Before presenting a problem in a meeting, however, it is important to check again its contents including preliminary solutions. The check of problem contents is carried out by: proposing entity; agenda developer; speaker/presenter at the meeting. Such a check must make sure following contents of the problem:

- A brief introduction to the existing problem.
- A forecast of consequences of the problem without a policy.
- A comprehensive, short, and clear summary of proposed solutions to the problem.

- A forecast of expected impacts of the policy and preliminary solutions and level of resolving the problem upon the policy enactment.

(iv) Present to competent authorities: A presentation at the meeting of agenda review committee is very necessary for a policy to be officially accepted in the agenda. A presentation can be made by any of following people:

- The leader of the agency that proposes the problem (minister, chairman of provincial people's committee).
- A specialist of the agency that is assigned to monitor the problem so proposed.
- In some countries, an outside expert in the society that has been interested in a social problem may be engaged to make a presentation on that problem.
- The public servant that organizes the agenda or a person assigned to lead the meeting will likely present the problem.

(v) Competent authorities' acknowledgment of the policy problem: When a competent council reviews and discusses the problems proposed at its meeting, it may make a specific decision on which problem needs to be paid attention to and to be developed into a policy. When such a problem is officially acknowledged as a policy problem, it will begin the phase of preparing a public policy to resolve that problem.

### ***2.3.3. Means of promoting the interest of competent authorities in the policy problems***

+ Influence through public media: An important mean to influence the decision on a policy problem in the policy agenda is through public media. There are different means of public media, most common of which are Radio, Television, Newspaper, and Internet. In the blooming era of information technology, public media plays a very important role in the society as it serves as the communication intermediary within civil society and between civil society and state institutions. By means of public media, even common classes of the population and minority groups that previously had no opportunity to raise their voice can now speak their problems over the media such as Internet. In which, traditional means of public media such as newspaper, radio, or television are used to communicate public news to target audiences to serve pre-established objectives.

Utilizing the increasing role and power of public media, many policy problems have been raised and reported by civil society and become public problems, which has a considerable influence on policy making agencies in the state system.

+ Influence by encouraging makers of decision on the policy agenda: Important individuals with considerable role and influence on policy agenda decisions are those that common people or social groups are usually seeking to influence on in order to bring their problems into the agenda. This influence can target even public servants in charge of developing the agenda, assistants or secretaries to competent officials, etc. to promote the inclusion of the interested problems in the policy agenda. This is a method of lobby movement to influence those with authorities to make decisions.

By means of official or non-official meetings, letters, recommendations, telephone calls, etc., the lobbyists seek to attract the attention from competent entities related to the urgent problems that they or the group for which they represent are suffering. In this way, competent entities can speak out their significant voice to include the problems in the agenda.

## **Chapter 3**

### **POLICY PREPARATION**

#### **3.1. Overview of policy preparation**

Including a policy problem in the agenda doesn't mean that it will immediately become a public policy as desired. There are many problems that are included in the agenda but do not result in any policy. Whether a problem can become a policy largely depends on the study and proposal of options or solutions (policy scenario) to resolve the problems that must be reasonable and persuasive.

Official process of policy development/preparation is a process performed by the entities assigned to prepare the policies with necessary conditions in term of personnel, budget, and supporting tools for policy preparation. This process is different from preliminary study process for the policy problem to define demand for policy and include it in the agenda of competent authorities to resolve the problem. Previous preliminary studies are usually not scalable or perfect because of lacking conditions, means, legal basis, and finance.

Official study is a methodical, specific, sophisticated, and fully-covered study process to be able to reach a final conclusion on social problems and propose solutions to them. Product of the official study is the policy to be enacted and widely applied in the society; therefore, this process is decisive on future effectiveness of the policy.

Official study is a complex process consisting of many steps: (i) problem analysis; (ii) definition of objectives on the problem; (iii) determination of options and solutions to the problem; (iv) assessment of options; (v) selection of the optimal option to enact a policy.

### **3.2. Responsibility for preparing policy drafts**

Public policies are works implemented by the state; therefore, the designer of public policies is none other than agencies of the state system. However, there is always a group that directly prepares policies and takes responsibility from the beginning to the end.

According to a very brief definition by Thomas Dye, a public policy is “Whatever governments choose to do or not to do”<sup>15</sup>, accordingly, governmental entities of the state system are authorized to enact public policies. As such, any governmental agency that enacts a policy will have the authority to decide to assign policy preparation responsibility to any of its subordinate agency.

In fact, policies are prepared by individuals. These individuals are public servants that have abilities to study and write a policy, or we may refer them as experts. They have deep knowledge in the fields related to the policy problems, practical experience, as well as abilities to study, think strategically, and accurately express policies in a written manner. They also know to utilize necessary methods to study policy problems; and they have teamwork, communication, and negotiations skills in policy development. They are key role-players that design policies, but they are rarely known to the society. They stand behind competent officials that are leaders of agencies or ministries.

So, agencies of the state system are responsible for preparing the policies. But, in the course of the process, there may be the participation or influence of

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<sup>15</sup> Thomas R. Dye, *Understanding Public Policy* (Englewood Cliffs, NJ: Prentice-Hall, 1972): 2



other entities in preparing the policies. In the U.S., for example, Departments or Committees under the President, who are directly related to policy problems, are policy preparing agencies; but, the participation of following entities is expected:

- Interest groups: they are groups that benefit from a certain public policy. These groups are parts of the government and usually have a close relation with non-government interest groups. An interest group may be a group, state corporation, local government, sub-division of a ministry, etc. Operations and finance of interest groups are closely associated with the implementation of prepared policies. Interest groups often have a direct influence on the agency that is mainly responsible for policy preparation with financial means, number of voters, and expert staffs, etc.

- Committees and sub-committees of the National Assembly: these agencies review all of proposals from executive agencies. They play a crucial role in appraising policy drafts by frequently providing feedbacks against the policies and requesting preparing agencies of the Government to revise and finish policy drafts.

- Besides, voters can also have an influence on their elected deputies in the National Assembly to influence policy development process. The voice raised by common people or public media can also create an influence on the policy to be prepared.

However, governmental agencies are still entities with direct responsibilities to prepare the policies, develop policy drafts in written form, and submit them to competent authorities to transform relevant problems into actions of the government.

In Vietnam, the most important public policies of the nation are enacted by the National Assembly. The preparation of public policies will undergo a process with the participation of many agencies in the state system. When the National Assembly decides on an action program for the next period, it must define a list of policies to be considered and approved.

For policies regarding many industries or fields, the National Assembly (National Assembly's Standing Committee) sets up a Drafting Committee and assigns it to chair the preparation.

For policies under management scope of the Government, the National Assembly will ask the Government to prepare policy drafts. It will then assign a ministry or ministerial agency to chair the preparation for law projects or resolution drafts to be submitted by the Government. The agency so assigned to chair the preparation is responsible to set up a Drafting Committee. Typically, Drafting Committee (normally chaired by a ministry in collaboration with relevant ministries) or Ministry in charge of relevant field prepares a policy draft. Drafting Committee at ministry level is a functional service that collaborates with other services, ministries, or industries in preparing policy drafts.

Policies under enactment authority of the Government will be assigned by the Prime Minister to ministries, ministerial agencies, or governmental agencies to chair the preparation.

At local level, People's Councils (Standing Committees of the People's Council) assigns this responsibility to People's Committees or specific departments to prepare their own local policy drafts.

### **3.3. Policy problem analysis**

#### ***3.3.1. Nature and importance of policy problem analysis***

Policy preparation process officially begins when the National Assembly or Government officially assigns the responsibility to a drafting committee or agency. The complete process for policy preparation begins with an analysis of policy problems, determination of causes of the problems, and proposal of options and solutions to the problems.

In the early stage of formulating a policy, policy problems are identified, considered, and diagnosed for causes, then conducted a preliminary assessment of demand for policy as a solution, on which basis policy problems are addressed in the agenda of the competent authorities to enact the policies. However, the period from the time policy problems are included in the agenda until they are actually enacted as a policy is a process of meeting strict requirements of policy enactment process. In this process, the agency that is mainly responsible for preparing

policies must take orderly steps, employ appropriate policy analysis methods, engage the participation of related parties, conduct an in-depth study on policy problems, define policy objectives, propose solutions to resolve the problems, and analyze and compare different policy options to suggest the most optimal one in existing conditions to achieve established objectives.

First step in this process is policy problem analysis.

A policy problem has already appeared or existed before a policy is prepared. If it appears in a “bottom-up” manner, i.e. being reported from current situation of society to state agencies, which, in turn, submit the problem to competent authorities to include it in the agenda, then policy problem analysis process will be implemented in a full manner, consisting of following steps:

- Clarifying nature of the policy problem
- Analyzing causes of the policy problem
- Analyzing consequences of the policy problem

If it is perceived and brought into attention in a “top-down” manner, analysis process, in principles, will undergo aforementioned steps, too. Nevertheless, this process is much simpler because it is not necessary to persuade high-lever authorities about the problem (because it is them that recognize it).

Policy problem analysis is a crucial step. According to John Dewey, “a problem well put is half solved”<sup>16</sup>. Albert Einstein also emphasizes that, “If I had an hour to solve a problem I’d spend 55 minutes thinking about the problem and 5 minutes thinking about solutions”<sup>17</sup>.

The core nature of policy problem analysis is that it is the process of forming hypotheses of policy problems and testing such hypotheses. From an urgent situation in the society, the policy formulators need to think about it from “hypothetical thinking” perspective to analyze the situation.

Hypothetical thinking process requires the policy formulators to introduce hypotheses of the situation to answer the question, “Why does this situation exist?” Hypotheses are introduced of the manifest of the problem, causes of the problem,

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<sup>16</sup> John Dewey, Moral Education, and Two Principles of Public Policy, Paper for presentation at the Annual Meeting of the Philosophy of Education Society of Australasia. December, 2009, Honolulu, Hawaii, USA

<sup>17</sup> <http://www.goodreads.com/quotes/60780-if-i-had-an-hour-to-solve-a-problem-i-d>

its impacts on the society, and consequences of the problem without State intervention.

Then, the policy formulators themselves test those hypotheses by collecting information and evidence to support them. This process may result in the representation of certain hypotheses because evidence may be against or unsuitable with the original hypotheses. The collection of information and evidence to support pre-established hypotheses is also the process of clarifying policy problems.

In hypothetical thinking process, it is important to prevent any bias tendency. Usually, people tend to focus on information that is beneficial to them, but ignore negative one. When information is positive and close to the hypotheses, they are willing to accept it. But when information is negative to the hypotheses, they try to “ignore” it. In that way, they sometimes are led to misleading notions on the problem and causes of the problem, consequences of which may be a policy that is impractical. Therefore, public servants that formulate the policy must be capable of being flexible and willing to welcome and analyze even negative information to be able to discharge their duties in the most effective manner.

The importance of policy problem analysis is reflected by the facts that:

- It enables to explicitly re-affirm the existence of the problem, its urgency, and its impacts on the society. It can reveal potential aspects of the problem in the process, even when new information is discovered and original hypotheses are changed, the analysts can identify the policy problem again.

- Correct identification of policy problem, root causes of problem, and its consequences on the society are important bases for developing policies to respond to market needs and focus on resolving the problem appropriately.

- It enables policy formulators to clearly identify unique features as well as political and social aspects of the problem. Therefrom, appropriate solutions can be sought to resolve the policy problem.

- It also requires policy formulators to define required assumptions or conditions to resolve the problem in a certain socio-politic context. These are also bases to ensure the feasibility of the policy to be enacted.

- It also clarifies benefit relations of different groups associated with the policy problem. These are bases to establish objectives and solutions in consideration of these benefit relations.

### ***3.3.2. Clarifying nature of the policy problem:***

A policy problem has both external and internal manifests. Policy problem analysis must clarify the nature of the problem to avoid any misunderstanding between external and internal features that belong to the nature of an object or phenomenon. Determining the problem based on external manifest will result in proposed solutions that are intended only to deal with the phenomenon; thus, it is unable to resolve root causes of the problem, making it become worse, and even distorting the problem or arising new problems.

To clarify the core nature of a policy problem, following steps should be taken:

- Describe the problem through its manifests: Consider in which phenomena the problem is manifested? Problem phenomena may manifest in different aspects: some are relatively straightforward (e.g. cigarette smoking situation among the youth), while some are more complex and varied (e.g. hunger and poverty problem). Describing a problem allows one to view the problem and its manifests in the social life more comprehensively; then, he or she may envision the scale, scope, and complexity of the problem.

- Problem measurement: Describing or listing manifests of a problem only shows its surface. To understand it more deeply and comprehensively, it is necessary to measure it. Measuring a problem is to present qualitative and quantitative figures to determine the scale, scope, and nature of a problem in a specific, clear, and persuasive manner. For example, hunger and poverty problem may be measured by such indicators as:

+ Problem scale indicates whether the problem is a single problem or contains many sub-problems. The higher scale is, the more demanding policy is

+ Problem scope indicates how widely the problem covers the fields? Which are the subject groups? How many entities that are directly or indirectly influenced by the policy problem?

+ Problem nature reflects unique features of the policy problem, for example, a problem only related to a certain subject group (women, children); a problem related to religion; a local problem, etc.

+ Development trends of the problem: together with future conditions, how fast will the problem develop? Which are conditions that facilitate the development of the problem

+ How are the impacts of the problem on social life? Threat of the problem to social life.

Above-mentioned measures will become clearer if they are quantified. In case they are unquantifiable, their manifests should be clearly described.

### ***3.3.3. Analyzing causes of the policy problem***

Policy problem is a conflict that arises in the socio-economic life, or a need for changing current situation that requires the state to enact public policies to resolve. But, to resolve a problem, causes of the problem must be identified and solutions to it must be developed. Causes are factors that make a policy problem arise or result in phenomena of a policy problem. Identifying the causes of a policy problem is actually to answer the question, “what caused the policy problem?” In medical field, the cause of a disease can be just a virus; however, in social life, there are likely many causes of a problem: e.g. hunger and poverty problem can have different causes such as land shortage, lack of capital, unemployment, natural disaster, epidemic, accident, sickness, etc. To analyze causes of a policy problem and identify root causes of the problem, therefore, it requires the use of study tools and an in-depth analysis.

Root causes of a problem are conditions or activities that make that problem exist. If root causes are resolved, then the problem will not occur again. There may be different causes or factors that have an influence on the problem. Here, there are cause and effect relations between factors influencing outcomes of an event, but not every factor resulting in a problem is a root cause. For example, family violence problem may occur from drug abuse or financial difficulty, etc., looking more closely, it may result from gender prejudice, low education, or difficult economic conditions. Root cause is the cause that if being resolved, it may prevent from undesirable consequences of the problem.

To identify root cause of a problem, following techniques may be used:

- “But Why?” or “5-Why?” technique

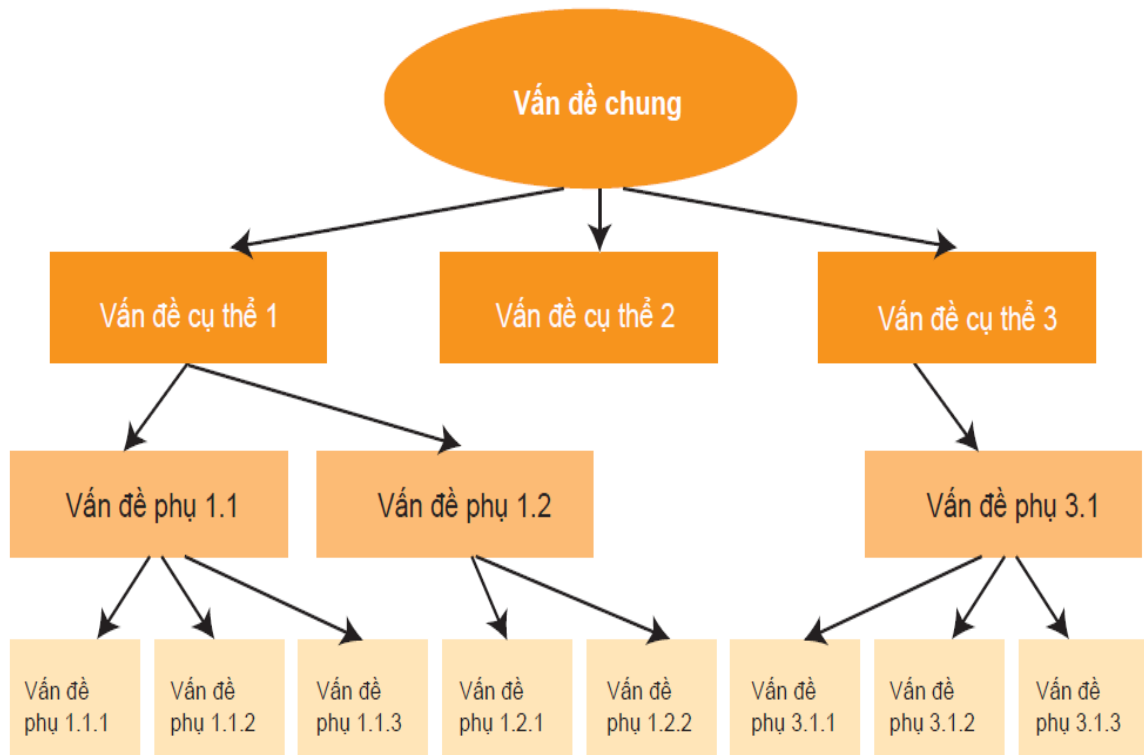
This method is carried out by asking why questions in the order of “effect-cause” to seek root cause of the problem.

The fundamental principle of seeking root cause of the problem here is by using a Q&A tool. Questions are in form of a “Why-clause”, and while the question is still answerable (i.e. root cause hasn't been reached), the questions continue. Typically, 5 Why-questions are sufficient to reach root cause of the problem.

- “Problem tree” analysis technique:

Problem tree is an analysis tool (a tree graph) that enables to identify and systematically analyze prominent causes of an existing problem to seek intermediary and specific (root) causes of the problem and to create the basis of developing solutions to the problem. Problem-tree analysis technique helps with understanding complexity and relations of the problem.

### **Figure 5. Problem-tree model**



A problem-tree model is formed as follows:

3. Draw a tree chart of 4-5 levels (see figure 1), in which the problem is marked clearly on the top.

4. Ask and answer the question: *Why does this problem exist?* or *What are direct causes of this problem?*

5. Determine direct causes of the problem (level-1 causes)

6. Determine indirect causes of the problem (level-2 causes)

7. Repeat the process until no more cause is found. Typically, a tree model may have 4 or 5 levels. Causes at the last level are root or ultimate causes of the problem.

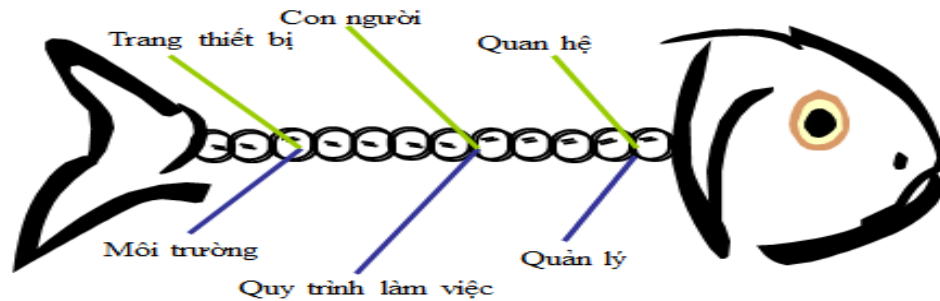
It should be noted that objective causes on which state agencies cannot have an influence such as climate, natural disaster, fluctuations of the market, international crisis, etc. should not be analyzed.

- “Fish Bone” technique

“Fish Bone” diagram is a picture depicting logical relations between a problem and its causes.



**Figure 6. Fish Bone diagram**



Steps of developing a Fish Bone diagram:

- Step 1: Draw a fish bone diagram (from left to right)
- Step 2: Write name of the problem at the fish head (indicate specific figures)
- Step 3: Determine main bones (main factors related to the problem)
- Step 4: Analyze and seek root causes by "why" questions.
- Step 5: Determine and circle root causes that actually lead to the problem and can be influenced
  - Step 6: Identify root causes using available data, survey, interview, or group discussion.
- Root cause analysis techniques

A root cause analysis allows us to identify and correct root causes of the problem in addition to understanding and resolving symptoms of the problem. Resolving root causes will help prevent the problem from re-occurring. However, it is not easy to resolve root causes by a single measure or action; in fact, it requires the combination of different measures and a continuous process. Therefore, root cause analysis is an iterated process and a tool that should be continuously innovated.

Main purpose of root cause analysis is to determine factors influencing the nature and significance, location and timeline of negative outcomes (consequences) of a single or multiple past events to identify the behaviors, actions or non-actions, or conditions that need to be changed to prevent the re-occurrence

of similar consequences and extract lessons to achieve more favorable consequences.

To be effective, root cause analysis must be carried out systematically, typically as a part of an investigation, in which the conclusions and root causes will be identified by recorded evidences on document. This often requires the efforts of a group.

There may be more than one root cause of an event or problem. The difficulty is that required efforts must be maintained to be able to identify root causes.

Purpose of identifying all solutions to the problem is to prevent it from re-occurring at the lowest costs in the simplest manner. If alternative options are similarly effective, then the simplest one or the one with the lowest cost will be the chosen option.

Root causes to be identified depend on the manner in which the problem or event is defined. An effective problem report or event description (e.g. a failure) is useful or required.

To be effective, an analysis should first make a sequence of events or time line to understand the relations between influencing factors and root causes (cause-effect relation), and identify the problem or event to be prevented in the future.

Root cause analysis may help with transforming a reaction culture (reaction to a problem) into a transitional culture that looks to resolve the problem before it may occur or become more serious. More importantly, it helps reduce the frequency of the problem over time in the environment whether root cause analysis is used.

Steps of identifying root causes of the problem are:

Define the problem or describe events to be prevented in the future. These include qualitative and quantitative attributes of adverse outcomes. This may involve identifying the nature, significance, location, and timeline of the event. In some cases, “reducing the risk of re-occurrence” may be an appropriate objective.

For example, “reducing the risk” of car accident in the future may be a more appropriate objective than “preventing” all of car accidents in the future.

Collect data and evidence, and then classify them over the timeline of the events finally until the failure or crisis. For each behavior, it should clarify timeline of conditions, actions or non-actions, and what should be done when it is different from what have been done.

Ask “Why?” and identify the causes associated to each step with respect to the defined problems or events. “Why?” means “What are factors that directly influence the outcomes?”

Classify causes into cause-effect relations of factors related to a sequence of events and root cause that, if so eliminated, may interrupt the sequence of consequences.

Identify other adverse factors that have similar or higher influence than the so-called “root causes”. If there are many root causes, which is actually the case in practice, it is necessary to clarify these causes to make sure later selection of the optimal solutions.

Define corrective actions that will surely prevent adverse consequences from re-occurring, including the inputs and factors. It makes sure that any corrective action, if being taken before the occurrence of the event, will mitigate or prevent specific adverse consequences.

Defining effective solutions with the group's agreement to prevent problems from re-occurring in a reliable and reasonable manner, within the control of division, and to meet objectives and cause no unexpected problem.

Correcting and finalizing proposed root causes.

Effectiveness is ensured by observing the implementation of proposed solutions.

Defining methodologies to resolve and avoid the problem may be useful.

Defining and resolving other adverse outcomes and factors.

#### ***3.3.4. Analyzing consequences of the policy problem***

Consequences of policy problems are events, phenomena, or impacts that will occur when the problems exist and develop. Typically, consequences of policy problems are negative impacts on social life. These consequences are results of the interactions between causes of the problem in certain contexts. For a cause to result in a consequence, it requires objective conditions, overall of which forms the context. But, a context is different from a cause because it does not produce any result or consequence. Any phenomenon has its cause. None exists without a cause. Therefore, each phenomenon is a part of a series of cause-effect relations in which it is both an effect and a cause. As such, even in a series of causes of a problem, higher-level causes in the problem tree may also be effects (consequences) of lower-level causes in the same tree. The final consequence of a policy problem, however, will be the overall impact of causes of that policy problem.

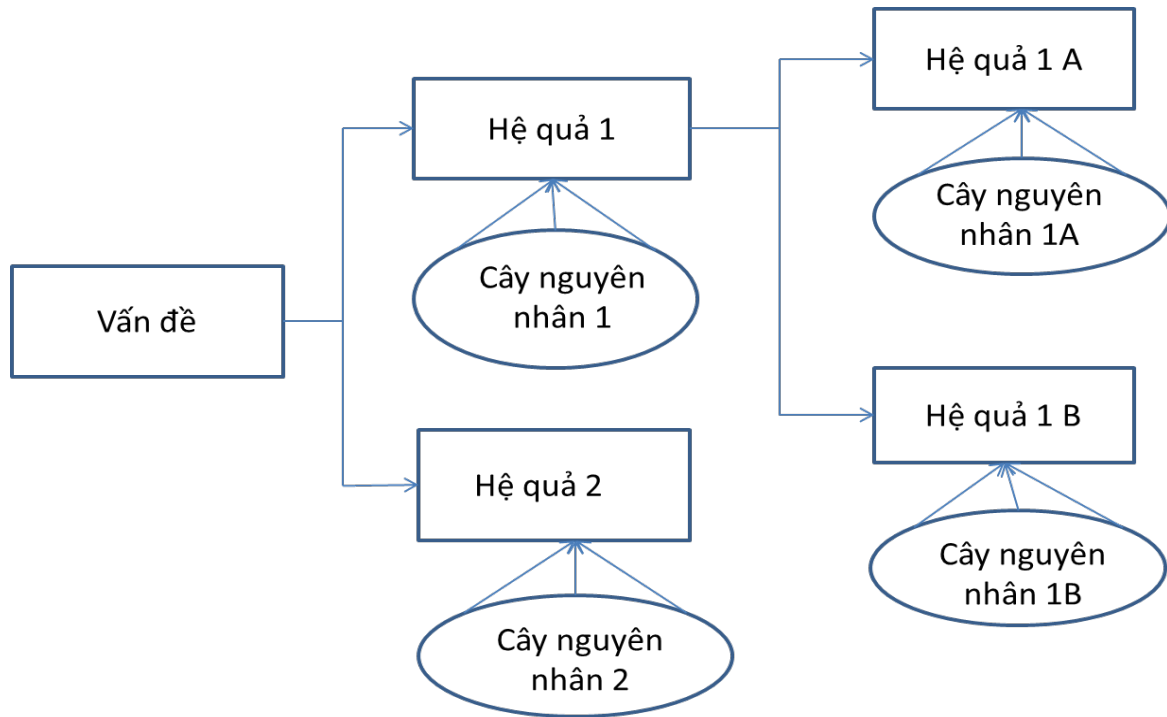
When a consequence is generated, it may influence the cause and make it worse. To eliminate such an undesirable consequence, its cause must be eliminated.

Analyzing consequences of a policy problem may be helpful in clarifying unpredictable adverse impacts of that problem. To analyze consequences of a policy problem, one may use Cause-Consequence Analysis (CCA) technique.

Cause-Consequence Analysis (CCA) is a method of analyzing a series of consequences of a problem. The purpose of this analysis is to recognize that series of consequences as reflected by undesirable failure or events, and to estimate the possibility of those consequences. Cause-consequence structure of the analysis is formed by combining two types of tree structures. For a consequence tree, it is formed from left to right, consisting of original events and subsequent events that result in other undesirable failures or events.

Causes and possibilities of resulting in consequences will form a top-down tree diagram just like a problem tree. Both cause and consequence trees create a series of intuitive consequences that help demonstrate cause and consequence relation resulting in different damages. A consequence tree shows a series of possible consequences and damages caused by the existing problem while a cause tree describes the causes and possibility of consequences.

**Figure 7. Cause – consequence tree diagram**



Cause – consequence analysis consists of following steps:

- Define the original problem/event (failure or a series of undesirable events that may result in a domino damage)
- Become aware of subsequent events (intermediary and original events and final damages)
- Final damages/consequences (damages may arise from different levels of subsequent events).
- Identify causes of original and subsequent events.
- Estimate the possibility of failure (data failure) based on the causes of original and subsequent events.
- Recognize the chain of damages

This cause – consequence analysis method may be applied in a special case when checking a series of complex events where many consequences may occur from the original event or problem.

Results of a cause – consequence analysis allows to describe in an intuitive and logical manner a series of consequences as a result of those events, and it also

indicates the possibility of occurring final consequences on basis of cause – consequence relation between events.

Cause – consequence analysis technique allows verifying identified causes in the problem tree, and it also points out consequences arising from the problem directly associated with such causes.

### **3.4. Determination of policy objectives**

#### ***3.4.1. Policy objective definition***

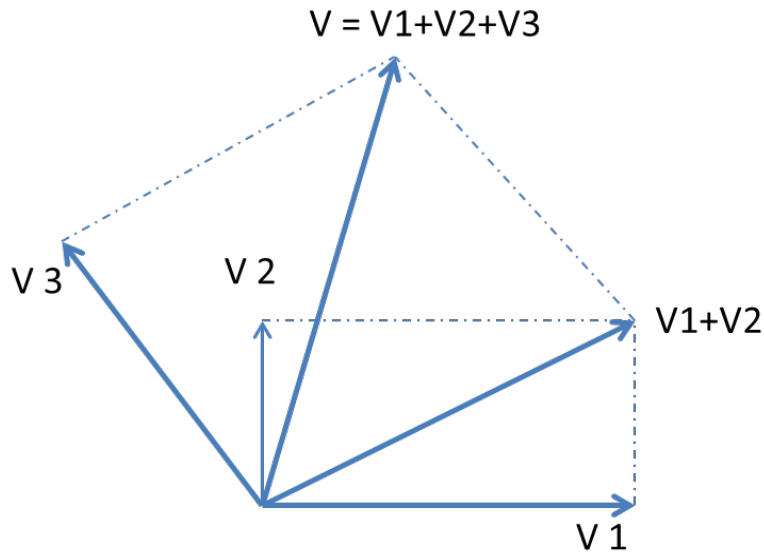
An objective is the destination that a policy seeks to reach. In other words, an objective is the destination expected to be reached in the future by means of a public policy. A policy objective is also expected outcomes of resolving the problem with that policy.

A social problem may have one or more objectives concurrently. It is important to define which are the main or core objectives that a policy should reach and which are auxiliary objectives associated with the main ones. If the main/core objectives are not reached, then root causes of the problem will not be resolved. In the meanwhile, whether auxiliary objectives can be reached or not depend on the extent of practical conditions for policy implementation.

Defining the objectives clearly is very important. When policy objectives are clear and specific, it is possible to know if policy implementation may reach those objectives or not. If they are vague, general, or unspecific, the new policy will have no benefit. Normally, one shouldn't define too many policy objectives; in other words, the fewer number of objectives is, the clearer and more specific they will be, and it is much more better if they can be quantifiable.

However, resolving a policy problem is usually the result of reaching a series of objectives, including sub-objectives and main objectives. This is explained as follows: each problem may begin from some direct and indirect causes, and from root and auxiliary causes. Resolving the causes will help reach sub-objectives. Linking sub-objectives will contribute to resolve main objectives of the policy (figure 8).

**Figure 8. Relations between sub-objectives and main objectives of a policy<sup>18</sup>**



Summarizing three sub-objectives: V1, V2, and V3, will lead us to the main objective V of the policy.

### ***3.4.2. Clarifying desirable and undesirable outputs of the policy***

An objective is the destination that a policy desires to reach. But, a policy can result in undesirable outputs, too. Because of specific conditions and limitations of policy design, or risks and obstacles in the implementation process, a policy may produce undesirable outputs. Sometimes, these undesirable outputs are against main policy objectives. Therefore, it is necessary to predict potential undesirable outputs immediately in the policy preparation. These undesirable outcomes may be considered as policy risks. Analyzing these risks and seeking to prevent and minimize them will reduce undesirable outputs of the policy.

A policy risk is a summary of random factors that may occur and influence on outcomes of the policy. A risk can exist along policy process and is associated with characteristics and conditions for deploying each phase. In principle, it is possible to forecast and measure a risk by conducting risk research and analysis. Therefore, forecasting and preventing risks must be regularly and continually carried out during the policy process. In policy formulation phase, however, it is

<sup>18</sup> U.S. Public Policies, pg. 236

necessary to conduct a risk analysis to identify potential undesirable outputs of the policy.

Policy risks include endogenous risks of the policy and exogenous risks of the environment influencing the policy.

Endogenous risks of the policy may exist because of the nature of the policy problem: for example, the problem is complex and relevant to many fields; it has a wide scope and an influence on various groups in the society; psychosocial reactions to the policy problem.

Exogenous risks include factors influencing the policy problem that arise from political, economic, and cultural context, or policy implementation because of limited qualifications and conditions...

Recognizing and measuring policy risks are a relatively complex, long process associated with policy process. In policy formulation process, it is important to identify at least the risks associated with the policy problem, and therefore, potentially resulting in predictable undesirable outputs.

To identify the risks associated with core nature of a policy problem, following steps should be taken:

- Based on analyzing the problem, clearly define its scale, scope, nature, development trend, and impacts on social life, and then forecast risks that may arise in association with each nature factor of the policy problem.

- Determine policy objectives to be reached and auxiliary objectives for main objectives of the policy.

- Develop a matrix of risks and desirable objectives. Consider how risks may influence or distort the objectives that result in outcomes not originally desired by the policy formulators. And then, list down the cases when undesirable outputs may develop. For example: A risk that the poor in rural regions lack land for cultivation will influence the desirable objective that people have stable jobs; thus, it may result in undesirable outcome that the poor have to seek for season-based employment and their income will be unstable.



### ***3.4.3. Approaches to policy objectives***

Policy objectives are defined for each of enacted policies. From commonly defined objectives, each of the stakeholders may adopt a different approach that is dependent on its interests or desire.

#### **+ Policy objectives in the approach of the policy formulator**

Policy makers, in principle, will set out policy objectives to demonstrate the desirable outcomes in resolving a policy problem. From different perspectives, however, resolving policy problems will result in different policy objectives. Also, determining different root causes of the problem may lead to different objectives.

In the meanwhile, policy formulators are often influenced by many policy factors, policy objectives; therefore, often reflect political objectives of the ruling party. When political objectives are in an agreement with policy objectives of the State, the trend is positive; otherwise, when political objectives are in a disagreement with expected policy objectives, then policy formulators usually have to ensure the harmony between these two categories.

#### **+ Policy objectives in the approach of stakeholders**

A newly introduced policy will have an influence on the interests of stakeholders related to the policy problem. Each stakeholder desires to obtain its interests from implementing the policy. Sometimes, in form of a common objective, each stakeholder will interpret that objective specifically in his way. If stakeholders directly engage in the policy process, they will “drive” the policy to the way they want.

Let's take the construction of a centralized industrial zone as an example: the government wants to promote economic growth, develop a synchronous infrastructure for the growth, and reduce environmental pollution. Investors see the objective as attracting investment capital to gain profit. Common people see the objective as more jobs and the ability to earn an income. Financing entities look into tax collection ability when the industrial zone comes into operation, etc.

### ***3.4.4. Significance of defining policy objectives***

+ Focus on causes of the problem: policy objectives must aim to resolve causes of the policy problem. If the objectives are not associated with causes of the

problem, they will be meaningless. To put it simply, objectives of a policy are to transform (negative) causes of the policy problem into the opposite (positive). For instance, a cause of the imbalance of university training fields is the lack of vocational guidance at the high school. In this case, an objective is to improve vocational guidance for high school students.

+ Orient the solutions: An objective is the destination to be reached; therefore, it serves as a navigation for solutions. Based on established objectives, policy makers will seek paths to reach those and specific solutions to achieve the objectives. For example, to improve vocational guidance for students, it is possible to propose an option to strengthen vocational guidance training for students. Accordingly, specific solutions are: organize dialogs and provide promotional materials on vocational guidance; conduct a survey; communicate over the public media, etc.

+ Determine problem-solving level: Typically, policy formulators want to resolve the problems in the most optimal manner. In fact, it is proven that it is not easy to resolve a problem completely. It is sometimes because the problem is too complex and as a result of different causes, and conditions do not allow addressing those causes synchronously and completely. It can also be due to causes of the problem that root deeply in the core nature of human, things and thus making it impossible to be dealt with at its root. For example, a cause of traffic jam problem in the city is that infrastructure is incompatible with urban development. This cause cannot be dealt with completely in immediate future because it relates to many obstacles, especially regarding new construction investment, etc. In this case, a policy objective must comply with actual situations and problem-solving level must be clearly defined.

#### ***3.4.5. Steps of defining policy objectives:***

Steps of defining policy objectives are:

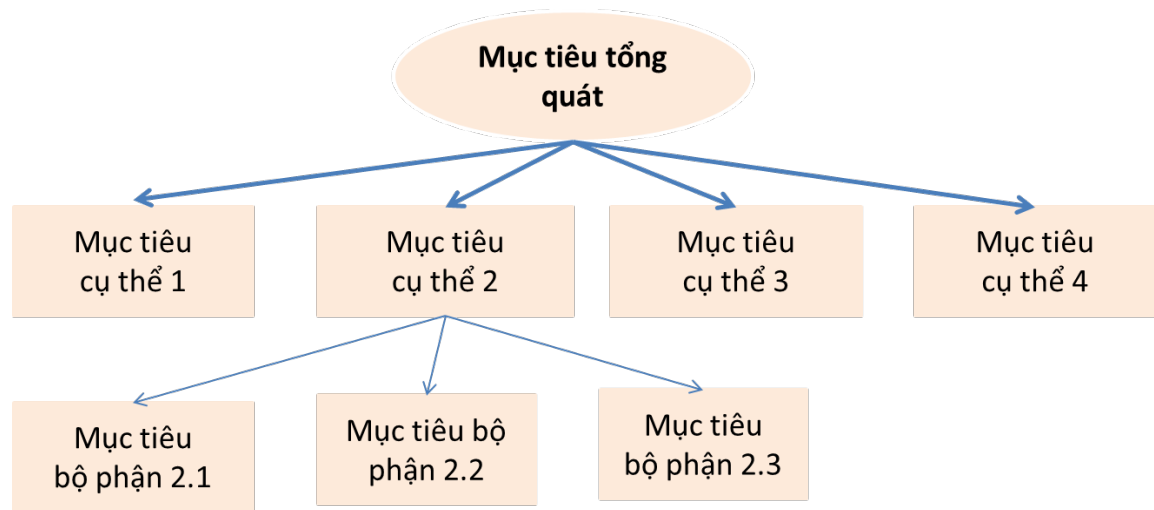
- Specify problem needs in a clear and easy-to-understand manner.
- Identify the causes of the problem and make a list of direct and indirect causes.
- State objectives to be handled for each cause.

- Link sub-objectives, and then summarize into main objectives of the problem.

An objective tree may be used to define policy objectives. Accordingly, it is possible to develop an objective tree based on the problem tree that has been used in analyzing causes of the problem. An objective tree is understood as a diagram describing desirable conditions in the future that are achievable after resolving the problems in the problem tree. Objective tree always goes together with problem tree and they assist each other. If analysis trend in the Problem Tree is top down, then that in the Objective Tree is bottom up.

Establishing an objective tree is to make sure that the policy is practically based on identifying and resolving root causes of obstacles to the development process instead of only dealing with external phenomena.

**Figure 9. Objective tree**



Principles of developing an objective tree from a problem tree: Convert causes in the problem tree into objectives in the objective tree by re-writing negative statements into positive statements. One shouldn't, however, be strict in converting negative statements in the problem tree into positive ones in the objective tree, and it is unnecessary to create objectives for all of problems in the problem tree

Steps of developing an objective tree from a problem tree:

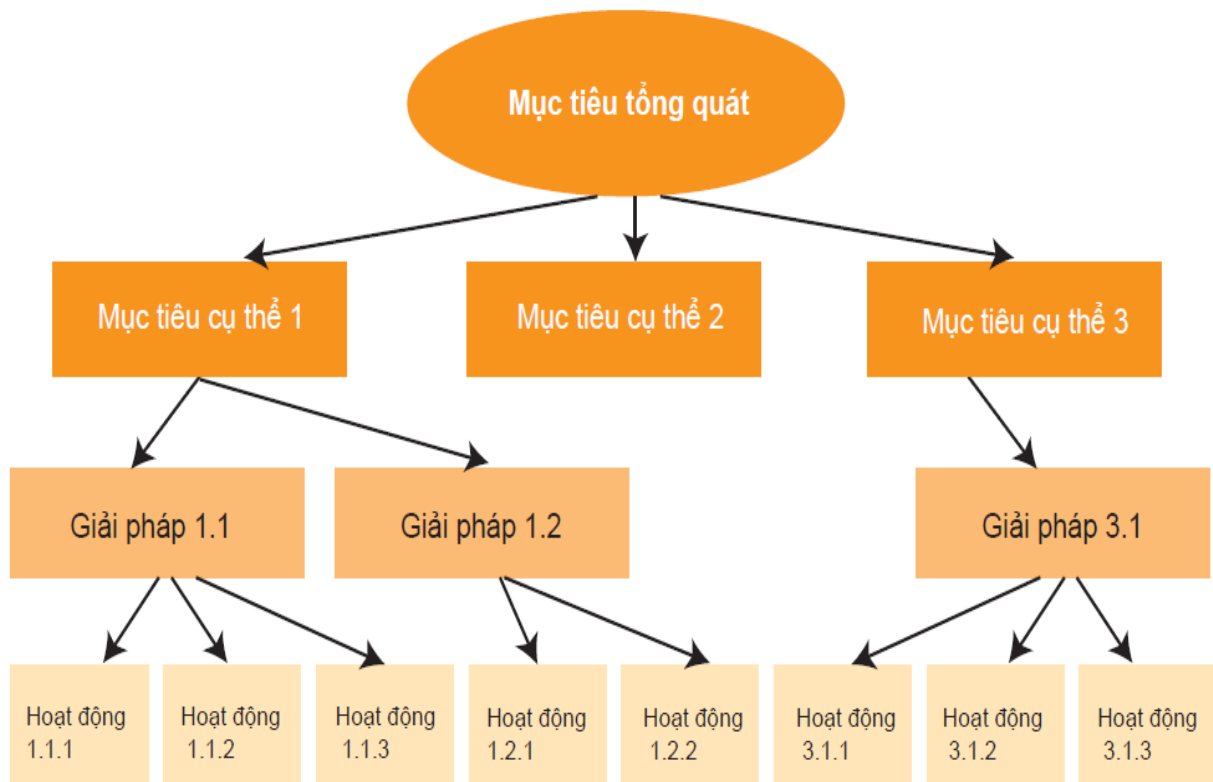
i) Convert bottom-level causes (e.g. level 3) into sub-objectives. For example: if the problem/cause is defined as “Backward cultivation methods”, then a sub-objective will be “Innovating farmers' cultivation methods”.

ii) Convert next-level causes (e.g. level 2) into specific objectives. For example: if the problem/cause is defined as “Low productivity plants”, then a major solution or specific objective for the next planning period will be “Enhance plant productivity”.

iii) Convert problem-level statements (level 1) into objectives. For example: if the problem is “hunger and poverty problem is still popular in localities”, then the objective will be “reduce hunger and poverty situation”.

Typically, an objective tree not only shows objectives to be reached, but also guides policy solutions. These solutions can be understood as a sub-objective. But, depending on each problem, one may regard these branches as sub-objectives or solutions. If the problem is complex and wide-spread that must be resolved in a long time using a combined policy, then these may be regarded as sub-objectives. If the problem is simple, clear, then these may be written as solutions and activities to be taken to perform specific objectives of the policy.

**Figure 10. Objective tree and solutions**



Defining policy objectives in practice isn't usually an easy task. If too many objectives are defined, then it may be difficult to achieve all of them due to limited resources, qualifications, and conditions to make sure a successful implementation, internal and external influencing factors, scale and complexity of the problem, etc. Thus, there is a principle that one should define too many objectives. Meanwhile, it is necessary to define the scope of each objective. To define the scope of each objective, answer following questions:

- Is the problem related to any other problem? If yes, how is the relation?
- What is the main demand of those affected by the problem?
- To resolve above-mentioned problem, which are main objectives?
- To achieve above-mentioned main objectives, which are specific objectives or sub-objectives?
- Is there any relation, positive or negative, among sub-objectives or between sub-objectives and main objectives? or which conflict may there be, here?

If this problem is closely related to another or several other problems, then policy objectives must be limited to a single problem as target of the policy. If one

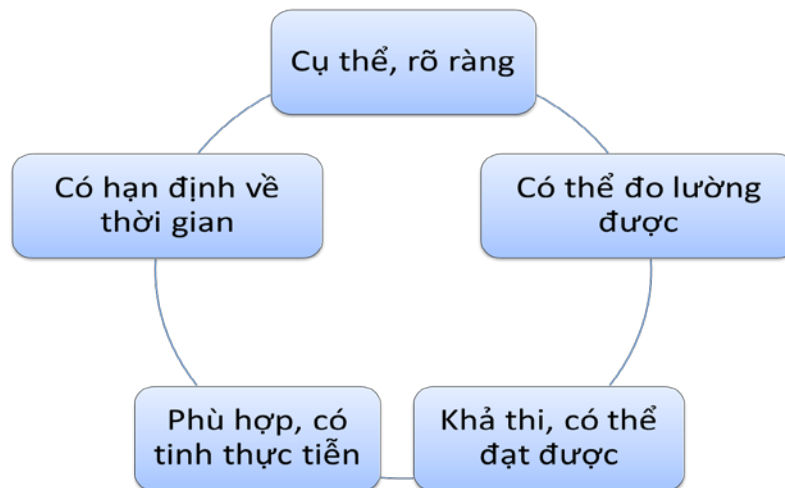
defines common, wide objectives that are related to other problems, then it will be impossible to resolve related problems falling outside scope of the policy.

In resolving the policy problem, there is a mutual relation between main objectives and specific objectives or sub-objectives. Normally, main objectives are the summary of specific and sub-objectives. If there is any specific objective that is in a disagreement with other specific objectives, or even main objectives, it will be very difficult to concurrently perform these objectives. In that case, it is necessary to re-determine the objectives in a reasonable manner so that it will not cause any mutual conflict.

#### 3.4.6. *Criteria for defining objectives*

Whichever method is used, policy objectives must satisfy following requirements:

**Figure 11. Criteria for defining objectives**



Above criteria were mentioned by George T. Doran in an article, “*There’s an S.M.A.R.T. way to write management’s goals and objectives*” in 1981<sup>19</sup>.

- *Specific*: An objective must be defined in a specific and clear manner without any generality or ambiguity. To make an objective specific, it is necessary to clearly define which changes are expected, why those changes are important, where those changes should happen, who participate in this process

<sup>19</sup> Doran, G. T. (1981). "There's an S.M.A.R.T. way to write management's goals and objectives". *Management Review* (AMA FORUM) **70** (11): 35-36.

- *Measurable*: A defined objective is measurable by specific criteria to know where changes actually happen? These criteria may be qualitative or quantitative, and in later case, they are more accurate.

- *Achievable*: A defined objective must be feasible and achievable. A feasible objective allows one to reach it with existing resources, abilities, and conditions.

- *Realistic*: An objective must be realistic with respect to the policy problem. In other words, it must show results of resolving the policy problem or further correct causes of the problem. If an objective is not associated with the policy problem, then achieving such an objective brings no benefit to the requirements for resolving the problem.

- *Time-related*: An objective is clearly required to be achieved in a time limit. Without time limit, the defined objective will be meaningless because one can delay it and waste resources in an ineffective manner.

### **3.5. Proposal of policy options**

#### ***3.5.1. Policy option definition***

To resolve a policy problem, there are different paths or means. A policy option is a mean to implement a policy to achieve its objectives. Each option will consist of several of corresponding solutions.

As such, there may be different options to resolve the same policy problem. One can also regard each proposed option as a policy scenario. A policy scenario consists of a list of potential solutions to be selected to form a policy.

The necessity of proposing different options will allow policy formulators to have a comprehensive view of different paths to resolve the policy problem, and more importantly, select the option that best satisfies the requirements. If one chooses an option rashly without considering others, sometimes that option isn't the optimal one, even considerable resources, costs and time may be spent without achieving desirable outcomes.

Subject to each problem of interest, it may be resolved by many options or just a single one. Typically, a simple, clear problem that originates from several specific causes may be resolved by a single solution option. For complex problems that have a wide scope of effect and originate from different causes, however,

many different options should be developed. Therefore, each option may adopt a solution to address root causes of the problem to achieve common objectives. Selecting the final option will be based on a comparison between different options to select the most optimal one depending on desirable criteria of the policy-makers.

### ***3.5.2. Types of policy option and theoretical background for determining the option to apply***

A problem can be resolved by many different options. Policy options can be classified into three basic categories depending on state intervention with the current situation. They are:

+ Status quo: means an option in which the state doesn't intervene with current situation of the problem. In this case, the State will leave it develop on its own and be resolved by entities of private sector without any state intervention. State policies only serve as the guidelines for private sector to resolve the problem or set a legal corridor for private sector to conduct activities as oriented by the State.

+ Indirect intervention: This option is related to problems that the market cannot resolve by itself and requires State intervention. The resolution of such a current situation, however, may involve entities of private sector; therefore, the State will encourage the participation of private sector while it provides an indirect intervention to facilitate private sector to do properly.

+ Direct intervention: For problems directly related to state duties toward the society that private entities cannot address because of political causes, limited capacities, or unpredictability of success, the State will take direct activities to resolve such problems.

A mixed option may also be adopted to resolve a problem: the State will directly intervene with the market using its human and financial resources, but also encourage the participation of private sector to resolve the problem on the basis of public-private participation model.

Whichever option to be selected is based on the theoretical background on State intervention with market economy.



The invisible hand of market economy isn't always succeeding in directing the economy. Market failures lead people to accept that government interference, the visible hand, with the economy is necessary.

Market failures are clearly demonstrated in following four situations:

*First*, supplying purely public goods. Purely public goods are goods and services that have two properties: non-competitiveness and non-excludability. Private market does not supply purely public goods because of great difficulties in generating enough revenue to cover expenses; in other words, private suppliers are incapable of requiring consumers to pay.

*Second*, external effects. External effects arise when a market transaction has a positive or negative impact on a third person while he or she is not required to pay (positive impact) or does not receive any compensation (negative impact). Private market can supply goods and services that are profitable without paying attention to external effects caused by their activities.

*Third*, market monopoly. This is a situation in which a small number of firms rule and dominate the market forming monopolistic forces. Market failure arises because there is no competition and monopolistic players can limit the supply lower than optimal level to raise price and increase profit.

*Fourth*, imperfect information. There may be a situation in the market that a market participant doesn't have full, necessary information, which renders it disadvantageous because of lacking information.

Normally, where market does not fail, State intervention is not required and private sector should be allowed to resolve the problem on its own. In that case, State only needs to problem policies, encourage, and facilitate conditions for private sector to implement such policies. This is a problem solution in the status quo option

Where market fails, State can intervene with the market in order to resolve its failure(s). Nevertheless, the government may choose to directly or indirectly intervene with the market.

Indirect intervention means that the State only intervenes with the self-running market by taking indirect measures to influence market activities via issuing regulations, contracting with private organizations with specific terms, or using financial instruments to influence activities of private sector such as taxation or subsidy.

Direct intervention means that the State directly intervenes with the market by using necessary activities, state system and officials, as well as financial resources to implement these activities. As stated above, the State will intervene with the market in case of any market failure to ensure the equity in providing these services to the poor. However, direct intervention of the State further requires following conditions:

- Outcomes of activities cannot be identified: some activities have outcomes that are difficult to be identified (for example, security and order problem in a region) or provision of which is difficult to be monitored, which may result in negative consequences (for example, weapon production). In those cases, the State should directly take measures to better control and monitor the production and provision of services and prevent negative impacts on the society.

- Activities are difficult for competition: Activities that private entities don't want to engage in or are incapable of doing so.

- Activities are politically sensitive: For certain political activities, the State must directly stand forward to avoid negative impacts on politics such as creating political, ideology, security, national defense instability, etc. Certainly, it depends on political context of each nation that the State may determine the extent of activities to be directly carried out by the State.

Selecting whichever the state should and shouldn't do is a decisive matter. Market failures, social equity call, and macro-economic stability are just necessary conditions for government interference. Government interference is usually costly. Undue government interference may result in more problems than resolve market failures. In other words, government failures can be as serious as market failures can. “When government failures are greater than market failures, ignoring

government failures can result in huge expenditures that only benefit non-poor people or such poor services that their opportunity costs exceed their benefits offered to the poor”<sup>1</sup>. Therefore, it is necessary to assess both benefits and costs of the intervention.

It is important that the State should study and clarify which services are essentially necessary that the State should directly carry out and the extent of which so that it doesn't take over too many responsibilities that exceed its capability.

According to a research by World Bank, to which extent the government should carry out a responsibility depends largely on its existing management capability and financial resources. Within limited capability and resources of the government, it should only carry out minimum functions such as providing public medical services, eradicating hunger and reducing poverty, and aiding in natural disaster and sabotage rescue. Only when its capability and resources rise, the government may provide educational services, environment sanitation, or security policies, etc.

**Figure 12. What should a government do?**

*(With its available capability and resources)*

	Resolving market failures			Improve equity
<b>Minimum functions</b>	<b>Provide purely public goods</b> such as: National defense, laws and security, Protection of property rights, Enforcement of contracts, Public health, Macro-economy management, etc.			<b>Protect the poor</b> , such as: Carry out hunger eradication and poverty reduction programs, natural disaster and sabotage aid, etc.
<b>Intermediary</b>	<b>Resolve external effects</b>	<b>Regulate monopoly</b> , such	<b>Resolve incomplete information failure</b> ,	<b>Provide social insurance</b> , such as

<sup>1</sup> World Bank: *2004 World Development Report: Making Services Work for Poor People*. World Bank, National Political Publishing House, Hanoi, 2003, pg. 243.

<b>functions</b>	such as: primary education, environmental protection	as: Regulations on operations, Ant-trust policies	such as: Insurance (health, security, retirement), Regulations on finance, regulations on consumer protection	redistribution: retirement benefits, family allowance, unemployment insurance
<b>Positive functions</b>	<b>Coordinate with functions of private sector:</b> e.g. agricultural policies			<b>Redistribution,</b> e.g. redistribution of properties

Source: 1997 World Development Report: The State in a Changing World, National Political Publishing House, Hanoi, 1998.

Above-mentioned facts show that necessary conditions for government interference are when market fails, is instable or unable to ensure the equity in providing essential services to the community. But, sufficient conditions for government interference are when the government has appropriate financial resources and management capacity to provide public goods and services.

In other words, sufficient conditions for government intervention are sufficient resources and necessary management capacity to obtain higher benefits than costs for each intervention decision.

- Resources of the government include human, asset, and financial resources. These resources are material conditions for activities of the government. Especially, financial resource is the fundamental element to provide inputs for implementing government decisions.

- Management capacity of the government comprises of institutional capacity - capacity of enacting policies, laws, and other decisions, capacity of organizing the implementation of these decisions, and capability of inspecting and monitoring aforementioned processes to ensure the effect and performance of decisions.

### 3.5.3. Policy idea forming approaches

Policy ideas are draft thoughts of the policies and orientations to change current situations associated to the problems of interest in accordance with desirable objectives.

There are three approaches to form an idea:

(i) Activity research based approach or incremental approach: A policy idea is formed on basis of using available work and modifying it to match the new context. This approach may be applied to developing policies on problems that have been partially addressed by other policies, or problems of researcher's or public interest that have been discussed over online forums and public media. Then, a policy idea is the development of previously discussed policies or research.

The task of policy formulators in this case is to conduct a research of available work, screen out reasonable ideas that are relevant to existing problem, summarize them and, on that basis, supplement and improve them to match current context.

(ii) System analysis based approach: A policy idea is formed creatively and freshly on basis of a systematic thought on the problem, its objectives and solutions to achieve those objectives. In a systematic approach, people expect to resolve the problem with a new solution that is materially different from existing available ones; therefore, forming a policy is a creative and innovative process.

This approach is applied to resolve new problems that haven't been addressed in previous policies and to which there hasn't been any research or summary on solutions.

In this case, policy formulators must adopt a creative thought and high level analysis and summary skills and, more importantly, a determination to innovate.

(iii) Idea combining approach: A policy idea is formed on the basis of combining different ideas to form a new one. From two different problems, one seeks a common attribute that is then addressed to serve an existing problem in the society.

For example, in today's context, poverty and low income problem in rural areas is a challenge to developing states. In the meanwhile, urbanization process is developing so fast that it results in many problems such as population increase, housing problem, etc. An idea of restricting the construction of factories in urban cities and moving them to rural areas can resolve both problems faced by urban and rural areas.

Combining ideas can also be used in case of learning experience of foreign states in handling certain problems. When a problem has been successfully resolved by foreign states using a public policy, following states can learn from this experience, but it must modify the case to match specific conditions in its country.

### **3.6. Development of solutions for each policy option**

#### ***3.6.1. Policy solution definition and requirements***

A policy solution is an activity or a set of specific activities to be taken to achieve relevant policy objectives.

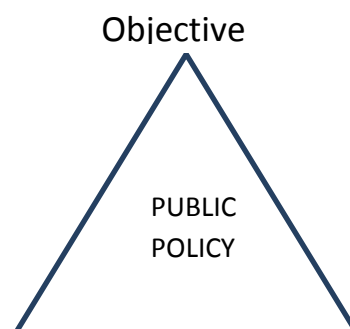
Each policy always includes many activities to be taken to achieve established objectives; therefore, each policy includes several or a set of solutions.

As previously mentioned, a policy problem may be addressed by several different options or paths to reach the established objectives that are referred to as policy options. Each path to reach the objectives will include a set of certain activities or solutions forming contents of that policy option.

In developing solutions for each option, it is necessary to make sure that proposed solutions meet following requirements:

+ Ensure the relations among Problem - Objective - Solution: Problem - Objective - Solution are three tops of the triangle of policy preparation (figure 13).

**Figure 13. Triangle of policy preparation**



## Proble

## Solution

This triangle reflects close relations among Problem - Objective - Solution of the policy, specifically as follows:

Problem is the root that forms objectives and solutions. Therefore, objectives must be set in order to resolve the problem and reflect the desire to reach certain outcomes of resolving the policy problem. Solutions are means to reach the objectives from current situation of the problem. Therefore, solutions must originate from requirements for resolving the policy problem, and they must reflect that they are tools connecting current situation and desirable objectives. If objectives are separated from problem, then policy is meaningless to the relevant problem. If solutions are separated from problem, they can reach objectives but are still meaningless to resolving the problem. If solutions and objectives are separated from each other, though they may be related to the problem, solutions will not reach the desirable objectives but lead to another negative consequence.

+ Comply with political opinions: solutions are inseparable of official political opinions of the ruling party. Political opinions usually have domination over state policies and orient them toward the will of the ruling party. In principle, if proposed solutions are different from political opinions currently sought after by the ruling party, it will be difficult for the policy to be adopted by the National Assembly whether the ruling party controls most votes.

+ Correspond to implementation capacity: proposed solutions must correspond to implementation capacity of the government. This is a very important element; however, in policy development process, inadequate attention is often paid to this element. As a result, enacted policies are ineffective and fail to resolve the problems as expected. Therefore, solutions must be proposed in consideration of implementation capacity of governmental agencies related to the implementation thereof. Specifically, attention must be paid to human resource that implements the policy, their knowledge or understanding of the relevant problem

and assigned tasks, their experience in performing similar tasks, specific skills to resolve the problem, and their awareness of responsibility, discipline, and engagement to the job.

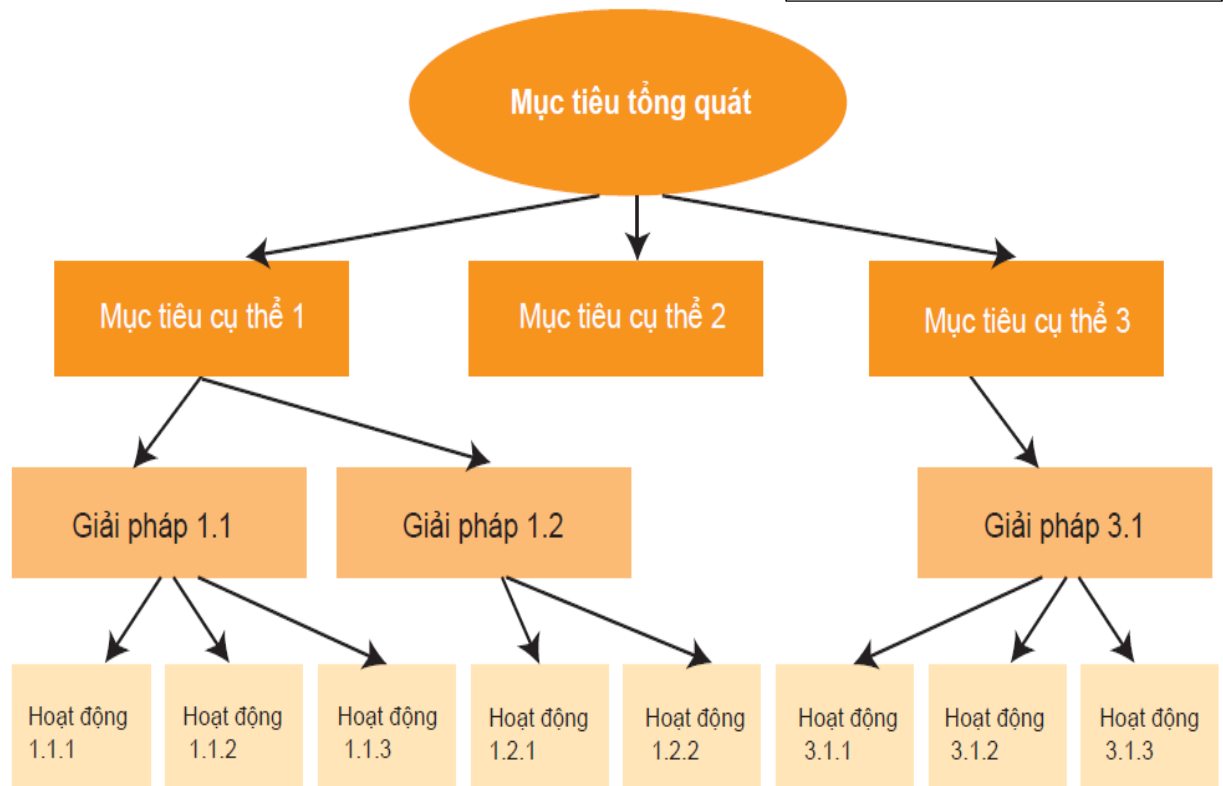
+ Associate with financial capacity: proposed solutions must be associated with necessary material conditions to implement them, especially financial resources that are available for deployment. Here, financial capacity not only means budget resources of the state that are available for implementing a policy, but also includes of financial resources that can be mobilized by engaging the society in performing the tasks. With the guideline as to promote public-private participation in the fields, mobilizing financial resources from private sector is an important method for State to resolve the policy problem without relying too much on available resources of the State.

### ***3.6.2. Policy solution development method:***

From a simple thought approach, solutions are objectives that are specified into sub-objectives that, in turn, are specified into specific activities. Objective Tree may be applied to form solutions in this manner. Then, objectives of the last level will become specific activities while objectives of upper levels will become solutions to perform sub-objectives. In the meanwhile, sub-objectives may be converted into sets of solutions to perform common objectives.

### **Figure 14. Objective tree and solutions**





Means are developed from Objective Tree while solutions originate from Problem Tree. For example, the conversion of a problem tree on hunger and poverty situation into objectives and solutions is as follows:

- Convert bottom-level causes (e.g. level 4 in figure 5.2) of Problem Tree into activities. For example: if the problem/cause is identified to be “Farmers are not trained about agricultural promotion”, then an activity in the upcoming plan will be “Train farmers about agricultural promotion”.

- Convert next-level causes (e.g. level 3) into simple solutions. For example: if the problem/cause is defined as “Backward cultivation methods”, then a solution for the next planning period will be “Innovating farmers' cultivation methods”.

- Convert next-level causes (e.g. level 2) into major solutions or specific objectives. For example: if the problem/cause is defined as “Low productivity plants”, then a major solution or specific objective for the next planning period will be “Enhance plant productivity”.

- Convert problem-level statements (level 1) into objectives. For example: if the problem is “hunger and poverty problem is still popular in localities”, then the objective will be “reduce hunger and poverty situation”.

In fact, it is not always easy to identify all causes and list them down in a full manner. Due to lack of necessary information on current situation of the problem, specifically details of its scale, scope, and impacts, or lack of necessary theoretical knowledge on means to resolve the problem, determining problem-resolving means or solutions is the combination of information, theories, and experience of the policy formulators.

Usually, the process to seek solutions to an objective starts with comparing current situation with experience or experience with available theories. Different policy options or policy solutions may be formed from the combination of these factors (figure 15)

**Figure 15. Development of policy options and solutions based on the combination of information, theories, and experience**

	<b>Lý thuyết</b>	<b>Kinh nghiệm</b>
<b>Thông tin đầy đủ</b>	Khoa học	Thói quen
<b>Thông tin không đầy đủ</b>	Phụ thuộc	Thực nghiệm

There are 4 methods to develop policy options and solutions, which are:

(i) Scientific method: When there are sufficient necessary information on current situation and a summary of available theories, policy options and solutions may be developed in a scientific manner. This method may be applied to problems arising from old policies to seek for solutions. Previous research and answers are used to form theoretical basis. By reviewing available theoretical basis and

considering practical information, policy options and specific solutions may be proposed for the problem of interest.

(ii) Habitual method: For problems with sufficient information but without any summary of theories for application, experience of policy formulators will be the basis to develop solutions. This method may be applied to most of situations that haven't been mentioned in laws. However, applied experience may not be fully compatible with new context; moreover, the effectiveness of this experience hasn't been proven; therefore, in this case, policy formulators should avoid simply applying experience but consider it appropriately under next context.

(iii) Dependent method: When theories have been summarized but there isn't sufficient information as required by such theories, policy option development method will be dependent of information changes. This method is often applied to policy problems related to national defense or diplomatic fields because it is impossible to obtain full information in these fields. In this case, developing solutions must be highly flexible and readily adaptive to changing context. In spite of available theories, it is impossible to strictly apply theories to these situations.

(iv) Method of developing empirical solutions: When there isn't both a summary of theories and information, such as the case of a financial crisis, political crisis, or formation of a new development guidance, etc. in which case neither theory nor sufficient information exists, then, developing policy options as well as policy solutions will be a totally new experiment that requires the policy formulators to have knowledge, sensitivity, and determination to learn from available information, as well as the ability to accurately and quickly predict developments of the problem to propose solutions in a timely manner. In this case, one should propose short-term, flexible, low-cost solutions that can be quickly applied, responded, and easily changed.

## Chapter 4

### POLICY OPTION ASSESSMENT

#### 4.1. Necessity of policy option assessment

Public policies are developed in order to resolve problems related to public sector. Behind each decision, whether objectives of a state or organization can be achieved, and, if yes, how much it costs to achieve those, and which consequences there may be, requires the policy formulators to conduct a strict analysis and assessment from the very beginning.

Policy assessment is the performance of activities to obtain information on subjects of a policy based on appropriate criteria in order to accomplish certain objectives. The purpose of policy assessment is the purpose of the entity that conducts that policy assessment. An assessment may be conducted for purpose of explanation, selection of a policy option, or self-interest of an organization, as well as improvement of an internal problem in the organization. There are two principal stages of conducting a policy assessment: *ex ante* assessment and *ex post* assessment.

*Ex post* assessment is conducted when the policies have been implemented. On the contrary, *ex ante* assessment is conducted in the policy development process prior to the decision and enactment of the policy.

*Ex ante* assessment focuses on proposals and policy options to consider the feasibility, effectiveness, or economy of a policy. In this stage, appraisal and assessment of policy options are necessary to provide reasons for a policy selection. Results of policy assessments are the basis for managers to make a selection decision. Quality of *ex ante* assessment activity plays an important role to the decision makers. A quality assessment is demonstrated by the level of careful analysis, scope of coverage of relevant problems, provision of reliable data and information for decision making purpose. To achieve the best assessment results, policy formulators may conduct many assessments immediately in *ex ante* assessment stage.

Entities that propose the policy may conduct *self-assessment* of their policy proposals by collecting, checking, and evaluating information. Questions that may be raised in a self-assessment are: is that policy idea feasible? how will that idea be demonstrated in the future? This will help make the policy proposers satisfied or

doubtful, in later case, more information will be required. If self-assessment presents good results, after completing the policy draft, policy formulators should conduct an internal assessment.

Not like self-assessment, *internal assessment* requires the participation of those related to policy formulation process. These participants may analyze facts and express their agreement or disagreement with the policy. Results of an internal assessment will allow to confirm the urgency of the proposed policy problem and required responsiveness of the policy, and to persuade authorized levels to proceed with policy preparation.

In policy preparation process, in addition to clarifying policy objectives, policy formulators also need to develop scenario, propose policy options, and develop solutions for each option. Depending on each policy and legal regulations, policy assessment may be extended to certain subjects. Whoever those subjects maybe, however, in following assessment, the required form will be *public assessment*. With this assessment, criteria on the effectiveness, economy, feasibility, and impacts of the policy will be clarified.

**Figure 16: Overview of policy ex ante assessment activity**

<b>Session</b>	<b>1</b>	<b>2</b>	<b>3</b>
<b>Time</b>	After drafting the policy	After drafting the policy / Before developing the policy option	Complete the policy option
<b>Subject</b>	Policy proposer	Participants in policy process	Third parties (Related parties)
<b>Form</b>	Self-assessment	Internal assessment	Public assessment
<b>Content</b>	Necessity of the policy	Urgency of the policy Costs-benefits of the policy Finance and human resource responsiveness	- Effectiveness - Economy - Feasibility and resources - Environmental impacts - Risk levels - Barriers and ability to overcome barriers to the

			policy
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An enacted policy is intended to meet practical requirements of socio-economic management. As a product of a willful process, however, a policy is the reflection of subjective opinions of the formulators. The levels may be different; however, formulators of each state have experienced mistakes in enacting policies. Therefore, to limit mistakes and increase the feasibility of policies, it requires policy formulation process to closely associate with ex ante assessment. According to calculations, in the U.S., every dollar spent on ex ante assessment of a policy can save USD 1000. According to statistics in 2010, in Vietnam, conducting an ex ante assessment on impacts of a policy is estimated to cost USD 500, but it helps save 100,000 times of that number thanks to less burden on the institution and more effectiveness<sup>20</sup>.

In state management activities, quality of policies and laws will decide quality of institutional operation, which may have an impact on society management capacity and promote development. Assessing policy options, therefore, is essential to state management in particular and public sector management in general. These assessments will surely bring back beneficial effects in terms of:

- Increasing the feasibility of policy in practice
- Achieving the objectives at the lowest costs. This is the result of best policy selection among information provided by policy option assessment.
- Policy selection process is based on information obtained from policy option assessment to form rational behaviors, and relevant evidence to make sure both equity and persuasiveness for policy proposers and public community.
- Decision makers can obtain sufficient information from multi-dimensional feedbacks of the public community to make the most favorable policy decisions for community.
- Information obtained from policy assessment helps enhance policy quality and reduce policy risks of subjects of application.
- Raise the awareness of responsibility toward actions and outcomes of the policy, and toward restricting the abuse of powers and casual enactment of policies.

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<sup>20</sup> Assessment of impacts of statutory documents to reduce burden on the economy" (Hong Hai).

The necessity of policy option assessment in policy formulation process is evidenced not only by its benefits, but also by a contrary question as what will happen without policy assessment. In fact, it is shown that policy and law impact assessment has been widely accepted in the world. For organizations and states that do not apply policy assessment, their decisions may easily become imposing and subjective.

Even if it is frequently applied, however, policy option assessment process is not always favorable if the decision makers do not possess in-depth professional knowledge in all fields. Also, both policy proposers and protesters may not behave objectively in providing information. Groups usually tend to seek for evidence to support their notions. Even policy supporters tend to support any data in their possession that support their arguments, whether methodologies of the research to obtain such data are strong or weak. That makes it difficult for the use of assessment results in making decisions.

Besides, how policy formulators decide and whether they use data in an equitable manner, while policy problems are mostly complex, relating to many industries, fields, and technical questions that may far exceed the expertise and knowledge of the competent decision makers. Therefore, it is necessary to develop qualified assessment criteria to be able to obtain practical results for decision-making process.

#### **4.2. Assessment criteria**

In an assessment, the subjects to be assessed are approached by the assessing entities using assessment standards (criteria). Assessment criteria serve as an information filter to generate valuable and meaningful judgments for assessment objectives. Subject to the subject and objective of assessment, policy assessing entities may develop, select, and use appropriate assessment criteria.

For conducting a policy assessment, what should be used as assessment criteria must be clarified and carefully studied to make sure the high accuracy of judgments. In assessing the necessity of a policy, for example, it is important to determine to whom it is necessary. Among assessment criteria, it is possible to approach absolute or relative assessments. If assessment criteria are easy to be quantified (effectiveness, efficiency), either absolute or relative approach may be used. If assessment criteria are difficult to be quantified (equity, necessity), only absolute approach is possible. It should be noted that, however, the objectivity of

assessment results are also dependent on the assessing entities instead of totally depending on assessment methods and criteria. Even among assessments, there is still subjectivity in using data or wrong data may be introduced by individual to mislead assessment results.

An assessment of feasibility of public policy options needs to be analyzed and determined on basis of certain criteria. Policy assessment criteria are used to measure values and possibility that a policy or program may bring about in the future. For public policies, measurement criteria must meet the requirements that they reflect values of objectives, make sure to harmonize benefits, and are open and transparent. The use of open assessment criteria allows establishing clear standards, makes sure that policy analysis is objective and focused on key problems. Based on each policy option with clear criteria, policy users must be able to rank alternative options in the order of priority. The appropriateness of selected assessment criteria is dependent on the nature and content of specific problems that they need to resolve.

As an instrument of public administrators used for common objectives, public policies should satisfy the benefits of different classes, groups, and subjects in the society. Therefore, the development of public policy assessment criteria must both meet the requirements and be specific measures of the policy problems to be addressed, and reflect the benefits of majority of the society and be accepted by them. Policy option assessment criteria must meet the requirements on:

- Adequacy: Assessment criteria must be able to measure the matter to be measured.
- Reliability: Assessment criteria must be able to ensure the accuracy of measurement.
- Understandability: Assessment criteria must be clear and not misleading
- Timeliness: Time of determining calculated values of assessment criteria must be appropriate.
- Objective conformance: Assessment criteria must reflect the objectives or outcomes of policy implementation in a conforming manner.
- Policy influence: i.e. significance of policy influence on the matter to be measured by assessment criteria.
- Measurability: i.e. technical assurance of data measurement of assessment criteria



- Manipulability: i.e. the assessor's ability to manipulate measurement values of assessment criteria.
- Comprehensiveness: No material aspect of the policy option isn't addressed or covered by the assessment criteria.
- No repetition or excess of assessment of measurement criteria of different aspects.
- Cost of data collection: Total cost of data collection for the group of assessment criteria.
- Response to resistance: Difficulty for resistance to assessment purpose.

Public policies are principal tools of the state and public organizations. Most of the public policies are intended to resolve specific problems within an overall view with multiple-dimension connections to different industries and fields. Therefore, objectives and measurement scales of public policy objectives are very varied. Measurement criteria of public policy objectives are demonstrated in different manners, such as: effectiveness, political feasibility, administrative feasibility, technical feasibility, cost-resource feasibility, equity, legality, social acceptability, benefits, risks, instability, etc. For each specific policy, project, or program, policy analysts and assessors will select appropriate criteria. Out of above criteria, however, some hold politically significant positions and are mainly used to evaluate policy options.

#### ***4.2.1. Effectiveness***

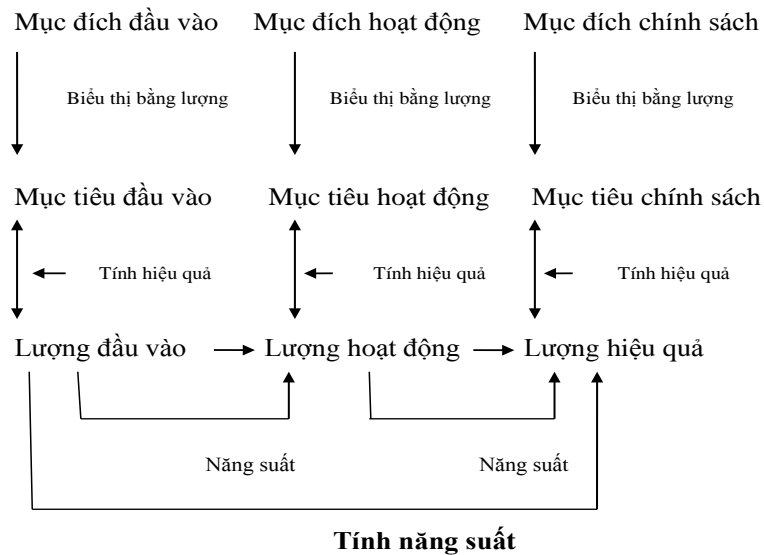
Most of policies of the state use state budget and public expenditures; therefore, it is essential to assess the effectiveness of a policy option that the client (state) will be able to achieve after paying for expenses (procurement, investment, subsidy, etc.). In fact, there are government failures that are reflected in public investment projects, programs, and public policies. Such failures are the representations of the ineffectiveness of public policies.

Effectiveness of a public policy is the magnitude of results received from the use of fixed resources. In other words, effectiveness of a policy is confirmed when a policy option has the capability of utilizing resources to the maximum extent compared to other options.

For a policy that has been or is being implemented, its effectiveness is normally determined by considering whether this program achieves expected results

or impacts or not. This will be included in actual data available (obtained from implementation results) for comparison purpose. But, the effectiveness in an policy option assessment (ex ante assessment) is not like that. Effectiveness criterion of a policy option is represented by *the ability* to achieve objectives and goals of a policy. The effectiveness of a policy option is supported by the ability to achieve the objectives with the highest performance.

**Figure 17. Simulation of performance (efficiency) based effectiveness**



Factors that need to be measured to assess the effectiveness are:

- Quantity of input materials (inputs)
- Length of time to be completed
- Quantity of tasks to be performed
- Necessity of these tasks (minimize unnecessary impacts)
- Costs of tasks to be performed
- Quantified performance: Time period and cost to complete a certain quantity of tasks.
- Productivity: Performance (level of focus to achieve performance quality)
- Identify policy objectives and compare

Assessing effectiveness of a policy option must be measured by trying to estimate the ability to achieve defined objectives and goals. In other words, effectiveness of a policy option must be considered by assessing the practicality of

objectives and ability to maximize the performance of resources to achieve the objectives. As such, in conducting an assessment, each policy option presents a mean to achieve the objectives. For a good policy option to be assessed as being effective, however, it must be supported with evidence and proved that necessary tasks for the policy will appropriately assured and completed in the shortest time.

In assessing policy options, determining the effectiveness may meet following difficulties:

- Measuring the effectiveness of a policy that may become outdated in the future compared to the assessment date, even with future-predicted data, it still has low certainty.

- Public policies are often associated with different objectives and goals, and they may be successful with some of these, but become a failure with others.

- Some objectives can only be achievable after a necessary period of time, which may result in differences from short-term assessment objectives.

- How to adequately deal with factors of political environment while politician's opinions tend to emphasize weaknesses of existing programs and promote strengths of programs expected to substitute by subjective will rather than by evidence of policy effectiveness.

Scope of application of this criterion covers most of policy proposals where there are concerns about the quality and feasibility of policy objectives.

#### **4.2.2. Economy**

In formulating a policy, together with effectiveness, the economy of a policy is also an expectation of the organizations and state. The economy required in selecting policies is how to save resources for a specific policy. It should determine if there is any alternative with which objectives can be achievable at the lowest cost, or maximum benefits can be sought at fixed cost.

A condition to assess the economy of a policy option is that *its objectives* are achievable: (i) At the lowest cost with fixed benefits; or (ii) With maximum benefits at fixed cost.

It is required in assessing the economy of a policy option that one must predict future elements to determine whether it is possible to conduct activities at lower cost. This requires assuming a situation to compare activities of the same types to find the option with the lowest cost. In other words, a policy option proved

that its objectives are achievable with the cheapest inputs is a good policy, achieving economical purpose.

To assess the economy of a policy, it is not sufficient to consider only the achievability of objectives. This also means that effectiveness does not necessarily mean objectives must be achievable at any cost, but only at the lowest cost.

The economy of a public policy will encourage entities to propose policies and opinions on costs and benefits, offer competitive proposals of solutions to saving input resources of the policy. The economy of a public policy is also reflected by maximizing benefits of the state and society while input resources are unchanged. Therefore, it is necessary to support policy-based intervention when benefits of the policy exceed its costs. On the contrary, when costs exceed benefits, the use of alternative options in terms of labor, capital, and materials is predicted to deprive the society of benefits (Patton and Sawicki, 1993; Weimer and Vining, 1999).

Applying economical criterion in policy option assessment is a matter of significance:

- The economy means a problem is resolved by using limited resources in the most optimal manner to achieve the objectives and satisfy defined needs. This is appropriate to any state with the needs to promote the development and growth.

- Assessing the economy allows policy makers to fully understand and conduct an adequate assessment of the option to be selected, and to make a decision that is most favorable to public objectives. This allows raising the policy formulators' awareness of responsibility in making a decision. On the other hand, information obtained from assessing the economy also becomes suggestions for a reasonable policy selection. If a policy option is likely proved to be necessary but its cost is too high, it will be difficult for that policy to be accepted and other alternatives should be sought.

- Requirement on the economy of a public policy also requires budget resources to be used to satisfy human needs as best as possible. If the Government spends more expenditures on an activity than which is necessary to create benefits, less resources will be available for other activities. Economical criterion in assessing each policy option will allow the policy makers to balance budget, allocate it reasonably, avoid focusing unnecessary resources on a certain area, making insufficient resources available to other essential areas.

Applying economical criterion in assessing and selecting an option has several difficulties that should be considered:

Firstly, it is possible to calculate benefits and costs of profit-seeking activities in an economic context, but it will be difficult to do so for activities that seek to promote social welfare, medical policy, environmental protection, order and security, or activities that require considerable expenditures. For example, it is difficult to calculate benefits of the combat against terrorism compared to military costs and the deaths and injuries of innocent people.

Secondly, it lacks an agreement on the notion on equity between cost obligations and benefit entitlements. Those people that support a call for determining the economy of the policy option presume that benefits and costs are distributed equally (to some extent) among the population. However, many policies are applied to specific groups (agricultural aid, student aid, etc.) while budget allocated to these policies comes from tax contributions of all tax payers. Therefore, it is not simple to conduct an overall assessment of the distribution of costs and benefits to seek a reasonable solution.

The scope of application is mostly related to regulatory policies, for example, workplace safety and environmental protection, and the consideration of approaches to market protection.

#### ***4.2.3. Equity***

Not like policies of private entities, public policies are tools to implement common objectives. The nature and functions of public policies are represented by common responsibilities toward to the community. In addition to the economy and effectiveness, each policy option must ensure the harmony of various types of benefits. Policy options must be oriented toward ensuring the equity among entities in the society. If state policies can guarantee this equity, they will promote social development. Equity, therefore, is one of mandatory standards in considering the possibility of survival and values of a public policy.

Presentation form of equity is creating impartial impacts on entities in the society both in terms of rights and obligations. In a policy option, following matters must be identified: who are beneficiaries of a policy action? and who aren't? who pay for policy costs? Then, it is necessary to determine the appropriateness of distribution form associated with policy objectives.

Requirement on the equity of policy is reasonable and necessary for public administration. However, there are certain difficulties in assessing the equity of a policy option:

First, there exist many conflicts in identifying the equity of a public policy. Existing notion on public policy equity is understood from two perspectives, process equity and final result equity. Process equity accepts differences in receiving benefits as a result of personal attributes. For example: some people may have better lives than others by receiving certain benefits (higher education, better job, higher income, etc.). Final result equity holds that the goodness of society such as properties, income, or political powers must be equally distributed to everyone. Result equity considers the achievement of goodness in the society not a simple outcome of personal attributes such as talents, willingness to progress, or working ethics.

Second, technical difficulties such as seeking certain means, measurement of equity for social relations are very complex.

#### ***4.2.4. Feasibility***

Feasibility of a policy is reflected by the operation and achievement of established objectives of a policy. The operation of a policy is assessed by cost-benefit criteria, budget resource, and other resources to meet the requirements on policy implementation. The persuasiveness of a feasible option is reflected by information reliability, calculation, analysis, assessment of possibility of policy implementation. A feasible policy meets such conditions as:

- Ensure financial and human resources;
- Ensure the availability of technical instruments and necessary technologies for policy implementation;
- Recognize all of barriers and provide the ability to overcome such barriers;
- Calculate costs and benefits and make sure that benefits can exceed costs.

Information provided from a feasible policy option usually shows sufficient conditions for implementation and a high possibility of achieving the objectives. Feasibility of a policy option has a direct impact on the decision-makers. Any policy option that has signs of unfeasibility must be suspended for consideration, provision of further conditions, or otherwise termination of policy enactment possibility.

### **4.3. Forms of policy option assessment**

There are many forms of policy assessment, such as: voluntary (self-assessment), mandatory (required by senior levels); internal, external, preliminary, comprehensive, administrative, political, judicial, effectiveness, efficiency, impact, etc. Depending on the nature, content and objective of the assessment, policy formulators can select appropriate forms. In ex ante assessment, to meet the requirements on selection of policy option, there must be: impact forecast assessment, performance assessment, risk assessment, and policy barrier assessment.

#### ***4.3.1. Impact assessment***

Impact assessment of a policy option, also referred as policy impact forecast assessment, is an analysis of potential impacts of a change in policy and options to implement that change, and also the communication of information, analysis results, and assessment to policy developers and public community. Policy impact assessment in English is also called “Regulatory Impact Assessment”, or RIA. In Vietnam, RIA is referenced to as legal impact assessment in some research works. Main purpose of RIA is to assess future impacts of government interference by means of a policy or law. For that reason, RIA tends to be the most suitable choice among policy option assessments in the pre-feasibility study phase of a policy or law, but does not present results or impacts of the performance of a regulatory law after being enacted.

Policy impact forecast assessment may be presented in forms of a report or an analysis of costs, benefits, and factors that have potential other impacts as a result of the policy to be enacted. In fact, however, RIA is the process of conducting the analysis of costs, benefits, and other impacts of the policy to be enacted. The analysis, assessment, and forecast of impacts caused by an intervention by means of a policy are conducted before and during preparation process to find the option with the lowest costs and risks. Policy impact forecast assessment includes both positive impacts (benefits) and negative impacts (costs) of the action that the state expects to conduct, which helps policy formulators to identify the best and worst options, and select one that minimizes mistakes of the policy, eliminates unnecessary procedures, reduces costs incurred to the people and enterprises, and promote economic growth.

Fundamental constituting elements of RIA include: (i) Analysis and assessment of impacts caused by a policy or law proposal, and results of such an

analysis must be presented in an RIA report; (ii) Institutional system that enables the effective implementation and performance of RIA.

Benefits of a policy impact forecast assessment:

- Help the decision makers better understand potential impacts of their decision before and after the enactment.
- Strengthen the consultation with groups of beneficiaries and stakeholders and raise the transparency of the policy to be decided.
- Raise the transparency of the policy with feedbacks and options from the society that reveal the advantages and limitations of the policy; raise government responsibility in selecting policies that are the most beneficial to the society, and making sure that no preferential treatment is given to any industry or locality.
- Provide information from impact assessments to allow calculating risks and minimizes policy conflicts.

**Figure 18. Impacts of RIA on the performance of public sector**

Analysis: benefits and costs of the policy/impacts	<i>The government obtains the solution with the lowest cost of compliance and minimal possibility of policy failure</i>
Consultation and exchange with related parties	<i>Increase of transparency, reliability; mitigation of policy risks to the people and enterprises</i>
Combination of many policy objectives (socio-economic)	<i>Policy integrity; decrease of vertical policy imposition; promotion of horizontal way of thinking</i>
Change of policy and law development culture; mitigation of unnecessary intervention and formal regulations	<i>Raise sense of responsibility of state agencies toward society and crease the reliability; step-by-step setup of a dynamic Government to serve people</i>

#### **4.3.2. Effectiveness assessment**

In policy option assessment, assessing the effectiveness of the policy is important. Assessing the effectiveness of a policy option is to consider whether the



solutions to maximize benefits and increase performance to achieve the objectives are effective or not. This assessment process is based on information and data presented by the policy option. Policy assessing entities will analyze the objectives to be achieved with specific tools and required resources to do so. In effectiveness assessment, criteria for measurement of activity performance and the use of costs for achieved benefits will be analyzed and a scientific and objective manner. Results of this analysis will present the final assessment on the proposed options. Then, the option that meets the requirement on effectiveness, based on specific criteria, will be selected and decided for enactment.

Policy effectiveness assessment is a common form of assessment that is applied to most of the fields addressed by public policies. So, its scope of application covers a wide range of fields, including most economic and cultural fields to be managed by the state. Effectiveness is not only required in economic fields but also in social fields. Effectiveness assessment is the standard of any private organization. In public policies, however, impacts on individual interests are not direct; therefore, it motivates public policy formulators to determine the effectiveness of the policy to be lower. This is the reason to many ineffective public policies that have been introduced. Consequences of these policies are normally failures to achieve the objectives, or high, unreasonable costs of achieving the objectives.

If a nation wants to prevent from lagging threats when it is facing competitions, then promoting economic growth and resolving social equity must be an integral part of effective public policies. Therefore, it is necessary to impose mandatory regulations on the assessment of public policy effectiveness, and even it is difficult to measure or quantity, quantitative measures should be developed.

#### ***4.3.3. Risk assessment***

Impact and effectiveness assessments more or less take negative and positive impacts of a policy into consideration. However, it still requires a form of risk assessment in formulating a policy to have an in-depth, more accurate assessment of the possibility of threats and damages to the society when a policy is adopted. From the analysis and assessment of information, judgment, and forecast of future risks, it is necessary to make preparations to prevent from and mitigate risks. Risks are unfavorable events of a policy that may or may not happen, but the predictability of these events is uncertainty. Risks are products of probability that

events or exposure may occur resulting in consequences if that happens. The higher probability (P) or consequence (C) of an event is, the riskier it will be. Risk (R) = PxC.

In fact, any activity involves potential risks. Formulating and enacting a public policy on a certain problem or field is not an exemption. For a public policy to function effectively and safely, it is necessary to conduct risk assessment on policy options.

Risk assessment is the use of different methods to identify losses and damages, and estimate the probability thereof and severity of losses or damages. Estimating risks is to identify the acceptability of risks or a determination of desirable safety level. Assessing policy risks is a method for state or organizations to select the policy and manage risks to respond to risks.

#### ***4.3.4. Policy barrier assessment***

In ex ante assessment, policy barrier assessment may be considered before including the policy in the agenda. An assessment of barriers to policy option before adoption and implementation is the most important. This assessment is intended to forecast difficulties and indicate the feasibility of a policy in the future.

In fact, there are inter-connected relations among components of ex ante assessment. In considering the feasibility of a policy, formulators may also have an insight into its effectiveness, or the feasibility of a policy is partially reflected in its economy. To a certain extent, among the assessments of the economy, feasibility, or effectiveness, some barriers to the policy can be revealed.

When a new policy is introduced, it may be beneficial to certain groups of people, but reduce benefits of or event cause loss to other individuals or groups. Therefore, it may face with reactions that become barriers to policy. Besides, differences between policy requirements and practical development of science and technology and insufficient resources are also barriers. In addition, political and legal factors, participation of interest groups can also form barriers to policy implementation.

A policy barrier can appear at the time of proposal or during the development and implementation of the policy. Common barriers are:

- Technical barriers: They are represented by the limitations and inability of meeting technical, science and technology standards required by the policy.

- Legal barriers: They are represented by missing regulations or disagreement on, even conflict with, the newly enacted policy. This requires policy formulators to consider changes in Law to implement a new policy. However, that is not an easy task and it requires considering whether it is justified changing a law.

- Political barriers: A proper policy, supported by majority of the society, may still be opposed by a politician who is reputable in the policy administration system.

- Barriers caused by interest groups: A policy may be considered to be more beneficial, effective, and humanism, but it may still decrease the benefits to others and be reacted by them. Representatives of interest groups may be industrial associations, enterprises, religions, localities, and other groups of affected people.

*Difficulties in assessing policy barriers:*

In the process of policy development, social opponency is essential to enhance quality of a policy. The question is to determine whether it is a positive opponency or a barrier. Causes of the promotion of barriers to policies are normally corruption, weakness in formulating a policy or making a decision, low people's cultural standards, etc.

Overcoming policy barriers is the policy formulators' efforts to make a new policy promoting social development become a reality.

In assessing policy barriers, it is required to determine if the policy is actually necessary. In assessing the importance of the policy on practical requirements, it is necessary to obtain social opponency toward the policy. One must differentiate between positive opponency and policy barriers.

After recognizing policy barriers, it is necessary to assess the severity (significance) of impacts caused by each barrier. This assessment will indicate causes and severity of the barrier, on which basis, one can classify and prioritize barriers to take appropriate solutions. Each type of policy barriers has different attributes and severity of hindrance to the policy. Therefore, it is necessary to assess correct level of hindrance and take appropriate solutions to each barrier. For assessment in order to overcome policy barriers, it requires the support of different means such as analyses on cost-benefit, effectiveness, economy, and humanism of a policy.

In assessing a policy, one must identify impacts of the policy on social entities as well as the use of necessary resources and technical equipment. To identify the barriers, the more information is collected, especially opposing opinions, the better it is. This information will allow identifying strength of the barriers and ability to overcome them. Policy formulators can analyze collected data and decide whether it is justified to try to overcome barriers or just stop the policy. In determining the necessity of overcoming barriers, one must consider whether he or she can overcome them and methods of seeking for related parties' support.

Before determining if a factor is a policy barrier, it is necessary to affirm the appropriateness of the policy problem. This means that if a policy isn't reliable enough about the benefits to the society to affirm its necessity, it cannot survive. In that case, it is not necessary to identify and assess policy barriers.

#### **4.4. Methods of policy option assessment**

##### ***4.4.1. Forecasting method***

Forecasting method is applied to policy option assessment in order to predict and forecast future phenomena and events. Forecasting a policy future is based on following documents:

- Data in the pre-assessment period;
- Results of analyzing factors influencing forecast results;
- Experience lessons that have been summarized.

To have a good forecast, it is necessary to meet following requirements: timely, accurate, in writing, meaningful units, and simple to understand and use.

There are two approaches to the use of forecasting method: one that is based on qualitative analysis, deduction, and feeling; and one based on quantitative analysis that mainly uses mathematic models on the basis of available statistics and materials.

Qualitative forecast can be conducted by various means of collecting information. Information may be collected by means of a questionnaire survey on related entities affected by the policy; interview with managers; Delphi method of collecting opinions from domestic and foreign experts in form of a questionnaire, and invitations to answer questions for purpose of policy forecasting.

Quantitative forecast includes time-series-based and causal-function-based forecasting models. Based on established statistics and math tools, a forecast will be conducted on the operation and impacts of the policy on the society and people's influences on the policy in the future. The relations between time and objectives or between variables with policy objectives are formed using appropriate math models. Some quantitative forecasting models that can be applied in policy forecasting are:

- Simple approach model
- Simple moving average method
- Weighted moving average method
- Exponential smoothing model
- Double exponential smoothing model
- Linear regression model (time-based regression: trend line forecast; causal regression; externalities; season-based habit changes).

In quantitative forecast, the following procedure is followed whichever specific model is selected:

- a- Identify forecast objective;
- b- Select factors to be forecast;
- c- Identify length of forecasting time;
- d- Select forecasting model;
- e- Approve;
- f- Collect required data for the forecast;
- g- Conduct the forecast;
- h- Apply forecast results.

This process is applied in an order and consistent manner, and implemented from studying, designing, to applying forecasting method.

#### ***4.4.2. Cost benefit analysis***

In public policy assessment, economic considerations are always important. Cost-benefit analysis is analyzing cost effectiveness of policy options and determining if benefits are higher than costs and how higher it is between the policies. The purpose is to analyze the effectiveness of policy intervention with status quo.

The objective of this method is to find the mean to achieve similar outputs with the lowest inputs, or more outputs with similar inputs. Conclusions of this analysis will consist of all options and their consequences in terms of costs and benefits (money) and a selection of the profit-maximizing, cost-minimizing option.

Cost-benefit assessment is the method of determining whether total benefits attributable to beneficiaries are higher than total costs incurred to affected people as a result of a policy selection. In the field of public policies, this is meaningful to make a policy decision that makes sure to comply with requirements on effectiveness and equity.

Cost-benefit assessment is carried out in following steps:

- (i) List down impacts and entities affected by policy intervention.
- (ii) Assess value of each impact on the welfare of each affected party by currency unit (monetization of costs and benefits).

- Assess inputs: Opportunity cost

Here, opportunity cost means opportunity cost of a policy: i.e. values of required resources for the option that best utilize them.

- Assess outputs of the policy:

Assessing outputs means measuring people's willingness to pay for their expectations.

Benefits: means the maximum total amount that people are willing to pay for their expectations.

Costs: means the maximum total amount that people are willing to pay to avoid undesirable outputs.

(iii) Time-based discount and risks

In policy option assessment, money value in the future will be different from that in the present. Therefore, a certain discount rate must be applied for an appropriate assessment. Use formulas to calculate present value of future cash flows (year  $n$ ) using effective discount rate:

$$PV = FV / (1+d)^n$$

Formula to calculate present value of net benefit flows using nominal discount rate:  $PV = FV / (1+r)^n$

In which: PV: Value at year 0

FV: Value at year  $n$

$r$ : Nominal discount rate,  $d$ : effective discount rate

Use expected value in statistical probability: In conducting a cost-benefit analysis, it should be associated with an analysis of expected value of the policy problem to identify expected opportunities to achieve maximum benefits.

When it is presumed that unexpected events may occur, cost-benefit analysis must clarify net benefits. The method to calculate predicted net benefits is carried out on basis of probability distribution over different unexpected events.

In case of predicted risks, proceed as follows:

- Identify and make a full list of occurrence possibilities, both unfavorable and favorable, to form a set of mutually eliminated unexpected events.
- Refer to policies that are being assessed, estimate present values of net benefits by each event.
- Distribute occurrence probabilities to the events so that the sum of which is equal to 1.
- Calculate predicted value of present net benefits: by multiplying present values of net benefits with probability of each events, then sum up.

Generally, calculating costs and benefits of a public policy to be applied in the future will result in the nearest approximate calculations with its discounted present value. When there are unexpected future events or risk predictions (precedents: climate, storm and flood, inflation, etc.), they all result in changes in money value from time to time. When the analysts can find the uncertainty of costs and benefits as a result of unexpected events and their probabilities, then expected net benefits can be calculated. Indicate that only policy options having positive net benefits will be accepted. However, accepting and selecting the decision are different problems.

(iv) Policy selection

Necessary conditions for a public policy to be accepted is that the calculation of costs with appropriate discount rate over time and risks results in positive net benefits. When there are many options that meet the requirement on positive net benefits, the one with the highest positive net benefits will be chosen. This allows policy formulators to make a selection decision on the combination of different policies to maximize net benefits. When all of policies are available and mutually

eliminated, one should maximize the effectiveness by selecting one policy that has the highest positive net benefits.

#### ***4.4.3. Lowest cost-effectiveness analysis***

Cost-effectiveness analysis is a technique to identify minimum costs of an option combined with programs to achieve a given objective. In lowest cost-effectiveness analysis, it is required to select a common objective for expected program of the government. The question is how to select the combination of programs to achieve the objective at the minimum costs.

For example: The government sets an objective to reduce death tolls caused by diseases and accidents by an average of 5,000 people each year for 10 years. It may launch many programs to implement this objective.

> Use budget to propagandize the risks of smoking and using alcohol on the public media.

> Provide a mandatory regulation that all buildings must be equipped with fire-alarm systems and provide this equipment for free to low income people that are highly vulnerable to fire.

> Provide aids to improve medical care conditions at hospitals.

> Invest in upgrade traffic roads to reduce traffic accidents.

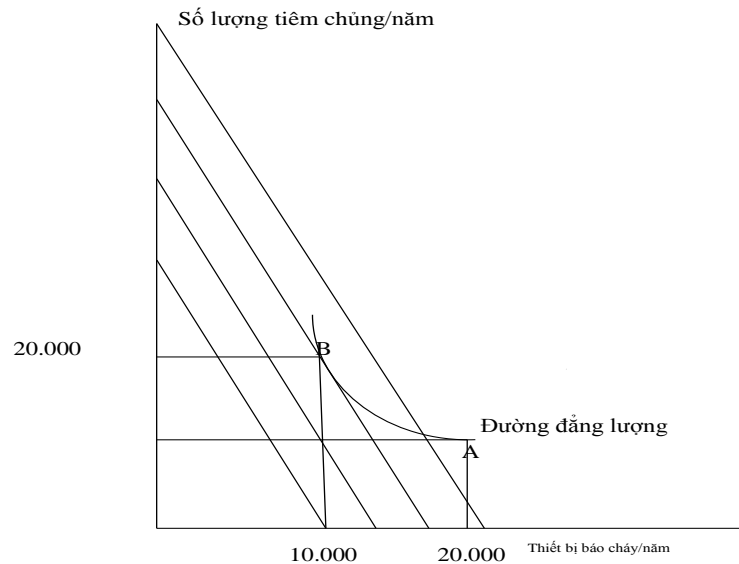
As an example, let consider two programs: provide fire-alarm equipment for free, and provide free anti-flu vaccinations to urban residents. The objective of both of these programs is reducing death tolls caused by fire and flu diseases by 5,000 people.

The method to identify benefits and costs to minimize costs is identifying all combinations of two programs that can achieve the objective. This allows developing an isoquant curve for two programs. An isoquant curve indicates the combinations of inputs that can produce the same outputs.

Results of cost-effectiveness analysis allow policy formulators to consider the offset between two policies by combining the budgets of both programs. In this way, the government can achieve the objective at the lowest costs.



**Figure 19. Cost-effectiveness analysis**



Combination of both programs with the lowest costs is B.

Isoquant curve Death toll decrease of 5,000 people.

It should be noted that, however, the option with the lowest costs to achieve the objective isn't always a good selection. Here's an example:

The objective of U.S. Government that is always supported by the people is minimizing electricity costs. However, Mr. Bush's government backed changes in environmental regulations that allow coal miners in West Virginia state to fill in valleys and springs with stone, soil, and dust from mining activities in the mountain top, because that is the least expensive method instead of moving them to another location, or recovering the mountain top after closing (which are very expensive). But, the people found that consequences are less desirable than cheaper electricity bills.

#### **4.4.4. Decision analysis**

Before making a decision, policy formulators face many choices and even difficulties. Robert Behn and James Vaupel (1982) hold that most of policy formulators are too busy to carefully research the huge volume of detailed analysis found in each policy. How to select a correct policy in a quick and simple manner but still ensuring the objectivity is both the question and desire of policy formulators. In "Reading Mas (1997)", A.Stockey and H.Zeckhauster introduced a decision analysis technique intending to structure feasible decisions in unstable

conditions. This method makes an outline of decisions (associated with relevant data) for policy formulators to select alternatively. Basically, decision analysis is another method of combining and presenting information. It maps out decision possibilities based on available data and develop decision options in the form of a “decision tree.” Decision analysis combines different methods, the most important of which is analyzing costs and benefits to describe available choices so that the analysts can monitor outcomes of each choice.

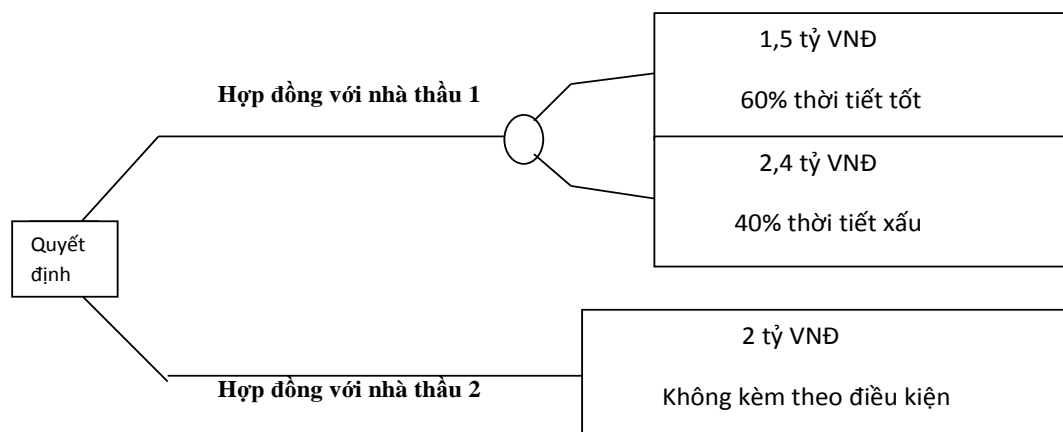
Decision analysis technique by A.Stockey and H.Zeckhauster is, in fact, a modified version of cost-benefit analysis. The difference is the modeling of decision-making process into a summary diagram of possibilities on basis of introducing expected value (EV) as the basis for decision selection.

Consider following example: Government A wants to upgrade a stadium. There are two contractors. Contractor 1 bids a price of 1.5 billion dong with the condition that there is no weather risk. If there is storm or rain, bid price will be increased to 2.4 billion dong. Contractor 2 accepts the package at bid price of 2 billion dong without any condition. According to experience and hydrological forecast, the possibility of bad weather is 40% and good weather is 60%. Based on these facts, which one should the policy formulator choose, Contractor 1 or Contractor 2?

Decision analysis method used for this case study is as follows:

Step 1: Make a diagram of decision possibilities based on available facts (Figure 20)

**Figure 20. Make a diagram of decision possibilities**



Step 2: Calculate and compare mean Value-at-Risk

Value-at-Risk =  $(1.5 \times 60\%) + (2.4 \times 40\%) = 1.8$  billion dong

Meaning of mean Value-at-Risk: As one cannot know for sure when there is bad or good weather, he or she can only find an average cost, like in a lottery, of two possibilities:

- (i) Loss of 1.5 billion dong with a chance of 60%;
- (ii) Loss of 2.4 billion dong with a chance of 40%.

As per calculation: 1.8 billion dong is the mean cost if this situation repeats many times.

This mean is also called expected value (EV). EV indicates the concentration of risks. Therefore, when:

EV < costs incurred by the contractor: Not select

EV > costs incurred by the contractor: Select

Step 3: Select

After comparing expected values of options with different costs, it provides the basis for the formulators to make a decision.

In this case study, EV=1.8 billion dong, which is less than 2 billion bid of Contractor 2. Therefore, there is basis to select Option 1 of Contractor 1 and refuse Option 2 of Contractor 2.

Decision analysis method may be applied to much policy formulation situations in which values can be quantified and compared with each other. However, the limitation of this method is reflected in the policy situation that values cannot be quantified such as human life or health, etc. Moreover, quantified values aren't the only basis for policy selection.

#### **4.4.5. Risk analysis**

Public policy is introduced to participate in the administration of public sector with a variety of fields and social relations. Therefore, unexpected negative impacts created by policy risks may arise and affect negatively on social entities, which must be assessed to be prevented and mitigated.

Risk analysis in policy selection assessment is different from policy risk analysis. Policy risk analysis is conducted by the policy proposers themselves with purpose to eliminate and mitigate negative impacts on adopting the policy option. Policy risks are related to understanding potential problems and upcoming barriers

(for example: political, social, religious factors, etc.) that may arise in the policy process and prevent the policy from being enacted. Therefore, policy risk analysis is the analysis of external impacts on the policy. In the meanwhile, risk analysis in policy assessment is conducted by another entity (third parties). This risk analysis is intended to assess and select the policy, and determine whether this policy may cause any risk to the society. Policy risks considered in policy formulation process can be understood as the magnitude of unfavorable results to social entities caused by a specific policy when it is enacted. Policy risk has following attributes:

- It happens in the future: it may result from activities of the proposed policy, or unexpected objective factors.
- It is related to changes: Thoughts, notions, activities, or changes in locations, etc.
- It is related to selection and uncertainty of selection order
- It results in loss

Risk analysis must be based on attributes of the proposed policy problems to select assessors with suitable knowledge and qualifications. Risk analysts must understand the principles and order of assessment.

Steps of analyzing risks of a policy:

- a - Recognize the threat of a policy (e.g., which risks can anti-IS-terrorist policy of Jordan bring?)
- b - Determine whom suffer from risks of this policy
- c - Assess the severity of the suffering
- d - Assess risk prevention and control capability

After identifying risks, assessing the severity, and determining risk frequency, it is necessary to predict the ability to respond. Whether it is possible to get over such threats or not, and, if not, what to do to control risks and adverse effects of policy impacts are questions to be answered to mitigate risks. In case risk controls are carried out, it is possible to try the option with least risks or prevent and mitigate the exposure to threats.

#### ***4.4.6. Environmental impact assessment***

Environmental impact assessment is an assessment method that isn't much different from regulatory impact assessment (RIA). The only difference is the scope of subjects to be considered. While regulatory impact assessment is the

forecast of potential impacts of a policy draft or measurement, analysis of policy impacts on all aspects (society, economy, environment), environmental impact assessment only looks at environmental impacts of the policy in order to ensure sustainable development. Recognizing the importance of environment in the development process, many nations in the world have issued mandatory regulations on environmental impact assessment in addition to RIA such as Netherlands, Determine, Finland, etc.

Law on Environmental Protection (2005) of Vietnam officially regulated and required the application of environmental impact assessment (EIA) since 2006.

Environmental impact assessment can provide policy formulators with useful information that helps them select the policy to prevent and control environmental impacts. In nature, environmental impact assessment is considering whether policy impacts on the environment are positive or negative, and how it influence climate changes and human. To obtain useful information to accurately assess impacts of an policy on the environment, proceed as follows:

- Assess current (actual) condition of the environment;
- Forecast impacts of a policy on the environment: Impacts on animal preservation, primary forests; pollution sources of the project; noise, emission, and wastes and their properties;
- Assess the use and exploitation of natural resources and recoverability;
- Assess the severity of impacts, negative/positive impacts on the natural resources, environment, human, and society;
- Assess solutions to negative impacts: waste disposal technologies, efficiency, effect mitigation ability, etc.

After conducting a qualitative and quantitative assessment and cost-benefit analysis, it is possible to make a decision that both meet the objectives of socio-economic development and no environmental impact, or the impact to environment is lower than the benefit.

#### *4.4.7. Application of general equilibrium and econometric models in the macro-economic model*

Ex ante assessment of overall impacts of a policy requires the use of macro-economic and micro-economic assessment model. Basic economic models that

may be useful for ex ante assessment are econometric and general equilibrium models.

Econometric models: consist of behavioral formulas, econometric formulas that are calculated according to time-based data, and accounting formulas. These models may repeat past-observable behaviors in the future, presuming that these behaviors are still fully valuable.

General equilibrium model: This is a model based on the theory on economic factors. This model simulates economic policies and carries out a comparative analysis of policy reforming activities. Comparing two economic states means comparing gross domestic product, production, consumption, income, employment, price, or export between reference level and simulated (model) level

## Chapter 5

### OPTION SELECTION AND POLICY ENACTMENT DECISION

#### 5.1. Significance of policy option selection

A policy problem can be resolved by many different options. There are options that can achieve certain objectives but cannot achieve others. Policy option selection is the strategic decision-making process in order to identify and form the movement trends of the policy in the future and is often considered as “the most open political process” when many potential solutions to resolve a policy problem are presented to the competent authorities for consideration and decision of the optimal one. Among such proposed options, the formulators must be able to determine which one is optimal. According to David Matheson and Jim Matheson in *The Smart Organization*, an option is optimal if it has following properties:

- It is the option that provides the formulators with a wide scope to make a decision;
- It is practical.
- It is suitable to abilities and resources of the state and society.
- It doesn't create too many conflicts.

Selecting the optimal policy option has a significant impact on quality of the policy and is decisive to the feasibility of the policy in practice. The practice of public policy formulation shows that there are many policies arising from very humanist thoughts and community-oriented purposes, but they are implemented ineffectively due to careless selection of policy option.

Each policy solution must be considered in its relation to the environment of future policy implementation and other existing policies. Developing scenario for these solutions must be able to simulate the practice as if the policy solutions were implemented in practice. This is a special process because it involves both political and technical elements.

- Political element helps the policy to respond to political objectives, ensuring social orientations as expected and the equilibrium of benefits among

political forces in the society, mainly including political orientation of the ruling party.

- Technical element helps the selected policy option to respond to technical requirements, ensuring the appropriateness and feasibility.

## **5.2. Principles of policy option selection**

Selecting a policy option is influenced by many factors and must be based on certain principles.

*The principle of focusing on public interests:* This principle makes sure that enacted policies are intended for interests of the public instead of certain individuals or groups. In principle, when a policy is enacted and implemented in practice, it divides individuals in the society into 3 main groups: beneficiaries of the policy, individuals affected (directly or indirectly) by the policy, and neutral group that is neither beneficial from nor affected by the policy. Public interest principle ensures that most of individuals in the society are beneficial from the policy or, at least, the group of beneficiaries of the policy has a positive influence on the development of society in general. For example, for hunger eradication and poverty reduction policy, the poor are direct beneficiaries of the policy, but when these people get over poverty state thanks to this policy, they will create benefits to the society as a whole, and even those paying more taxes for the implementation of this policy will benefit from.

*Principle of effectiveness:* a good policy option is one that achieves the established objective at the lowest cost, or, in other words, the selected option must be the most effective one. Basically, entities should only select a policy option that have more benefits generated than costs (damages) caused by the policy (total social benefits and costs), and if there are two options that meet this condition, the one that has higher positive difference between benefits and costs should be selected. For a public policy, however, this principle isn't always accurate because it is sometimes impossible to quantify benefits generated from the policy or, if it is possible to do so, benefits include not only economic benefits but also, and mostly, social benefits.

*Principle of systematization:* The selected policy option must be feasible (there are sufficient resources and conditions to implement it) and must not be



inconsistent with existing policies. A new policy cannot be separated from other policies that have dialectical relations to it, including former policies addressing similar problem (the new one is supplementing and improving the former ones) or those policies addressing a similar group of problems. This principle is also referred to as the principle of association or historical succession.<sup>21</sup> To do this, before selecting an option, policy formulators should have an overall view over existing policies and scrutinize policy implementation environment as well as accurately predict social context in the period of implementing the policy.

*Principle of objectivity:* For a policy to focus on the community, policy options must be based on objective requirements in compliance with the movement and development of social rules and practical conditions. The principle of objectivity requires that in analyzing policy options, they should be placed in the context of specific implementation (presumed scenario). In fact, implementing this principle is an indispensable requirement in enacting regulations. The Law on Promulgation of Legal Documents also requires to prepare a preliminary impact assessment of legal documents (RIA report) and preparation leading agencies and organizations must submit this report together with the draft. Decree No. 24/2009/ND-CP of March 05, 2009 of the Government detailing and providing measures for the implementation of the Law on Promulgation of Legal Documents also specifies details and methods of implementing the Law on Promulgation of Legal Documents that RIA reports must be prepared in all of three phases, from preliminary assessment in proposing the document, ex ante assessment during the development thereof, and ex post assessment after the enactment thereof.

Accordingly, a preliminary assessment report must identify social problems to be regulated by legal documents and adjusted for objectives of such documents, basic methods to be applied to achieve the objectives, costs, and benefits of solutions, and possibility of effectively implementing the documents. Results of an impact assessment in this phase are significant because it is the basis for the preparing agency to decide main contents of the documents. Before and during the preparation of documents, RIA is conducted to make clear that the selected policies

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<sup>21</sup> See Le Vinh Danh (2001), pg.175-176.

are optimal and cost-effective, and have positive impacts on socio-economic relations and environment, legal system, and basic rights and obligations of the residents.

*Principle of conformity*: a good policy option is one that stimulates the development of policy entities and society as a whole. Each nation has its own development characteristics; therefore, there is no policy that fits every nation. In other words, for a similar policy area and resolving a similar policy problem, different nations will have different policy options. This requires policy formulators to analyze and understand specific development context of the country to avoid repeating foreign experience in a subjective and voluntary manner.

### **5.3. Means of policy option selection**

Subject to specific policies and entities authorized to select the specific policy option, means of introducing, discussing and selecting policy options are varied. Means of selecting a policy option is often dependent on the importance of the problem and scope of competent people with policy decision-making powers. Brewer and deLeon summarized the means of selecting policy options based on these criteria as follows (Figure 21):<sup>22</sup>.

It should be noted that, however, whether identifying policy problems is important or not depends on characteristics of each nation in a specific period of development; therefore, there isn't any uniform pattern. Similarly, subject to legal regulations, Constitution as the first of all, that the number of individuals and competent authorities to make a decision on policy solution is different.

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<sup>22</sup> Brewer, Gary D./deLeon, Peter (1983), pg.215. Modified by Le Vinh Danh (2001), pg.278.

**Figure 21. Policy option selection model**

		Number of participants in the decision-making	
		Few	Many
Importance of the policy problem	Not important	Hidden union or minor association	Weak union
	Important	Easy and fast union	Stressful union, require the authorized person's determination

To identify the optimal policy option, it is necessary to compare proposed options with each other and with established objectives of the policy. Typically, a policy option cannot satisfy all of objective requirements; however, the selected option must be the one that satisfies the most standards. To assess the policy options accurately and objectively, it is important to obtain required data to analyze each option. A technique commonly used in analyzing policy options is cost-benefit analysis (CBA). In the process of analyzing all of policy options, it is necessary to predict potential consequence of the policy to the society and estimate social costs of implementing that policy. In principle, a policy option is selected if it fits to the conditions and context of the nation/locality from time to time, and is feasible.

Analyzing policy solutions presents many problems in practice. When information on the policy problem is fully collected and effectively processed, deducing a reasonable solution is relatively clear. However, many problems have not enough information for forecast but the forecast is mostly based on speculations (this is especially true for policy problems related to security & national defense, diplomatic affairs, etc. that are listed in the confidential agenda of the state).

Sorting policy options in an order of priority is very important in selecting and analyzing the options. A wrong order of priority may lead the decision makers fail to select an accurate, desirable solution. Sorting may be conducted by certain

criteria such as sorting by increasing costs of implementing the solution or increasing benefits offered by the solution. One can also sort the solutions in the order of net benefits (increasing difference between benefits received and costs paid) or benefit ratio (with the same costs, which solution brings back the most benefits?).

Expert consultation method is also widely used in selecting a policy option. This method utilizes scientific opinions from professional experts. Expert consultation may be performed individually or in groups. In the process of formulating and assessing public policies, consulting experts to form sets of opinions (*think tank*) is important for the assessment process to be objective and suitable, and to reduce the subjectivity of the decision-makers. It is important in consulting experts' opinions in selecting the policy option that one must choose appropriately competent experts in the field of the policy problem to be resolved, and minimize the effect of “group of interests” on these experts. Basically, a policy option, even if being selected and decided by an authorized person (for example, U.S. President under the U.S. legislative system), still requires a strict consultation on professional experts' opinions. In other words, policy options must be exchanged and discussed in a collective establishment. Although this requires much more time and efforts and even higher costs, it helps avoid the subjectivity and abuse of personal powers and interests integrated in the policy. For example, in the Missile Crisis at the Bay of Pig among the United States, Cuba and USSR in 1962, decision-making power was held by the U.S. President Kennedy, but he had to discuss intensely with the National Security Council in the week of the crisis. Many solutions were proposed and discussed by this Council to obtain the most effective one.<sup>23</sup>

#### **5.4. Criteria for policy option selection**

Criteria for selecting a policy option are specific measures for policy objectives, which mean values used to measure policy choices. These criteria are also considered as evidence or rational causes of state actions.<sup>24</sup>

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<sup>23</sup> See Le Vinh Danh (2001), pg.178.

<sup>24</sup> Craft, Michael E./Furlong, Scott R., pg.3

Determining these criteria will help make policy option selection become objective. Main criteria used the assessment of policy options are: political context, effectiveness, equality, feasibility (financial, management, and technical). Besides, other criteria may be introduced, such as equality or social acceptance.<sup>25</sup>

*Political context:* Public policies themselves are instruments to guide and lead the society of a nation to resolve problems arising in the society in compliance with state expectations; therefore, they are political instruments that must be consistent with the guidance and guidelines of the ruling party. So, policy options must be suitable to political context, which means they must not be inconsistent with guidelines of the ruling party. In Vietnam, for example, policies of the State must be neither inconsistent nor against the guidelines of the Communist Party of Vietnam. As such, one of the most important bases for formulating a policy option is the guidelines of the Party from time to time.

*Feasibility:* a policy solution is good only if it is implementable (feasible). To determine if a policy solution is feasible or not, it is necessary to consider factors related to the environment in which the policy is implemented and develop scenario in a scientific manner that is consistent with characteristics of such an environment.

*Management simplicity:* a policy solution is only practically effective if it can be applied. Outcomes of applying a policy option depend not only on the appropriateness of its objectives, solutions, and means (finance, human, etc.) of implementing the solution, but also on management capability to implement such a solution. Even if an option is good, it will not bring back desirable outcomes if it cannot be well implemented. Therefore, one should pay attention to determine the feasibility of management when he or she selects a policy option.

*Effectiveness:* effectiveness of an option must be considered in the relation between results received and costs paid to achieve those results. Under this criterion, when two policy options set similar objectives, one needs to analyze and select the option that is easier to be implemented at lower costs.

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<sup>25</sup> Craft, Michael E./Furlong, Scott R., pg.5

*Equality*: One of fundamental functions of the state is to ensure the equity in the society. Only when social equity is assured, it may develop stably. If a policy solution isn't helpful in mitigating, and ultimately eliminating, inequality in the society, it must at least avoid widening that inequality gap.

*Legality*: while the must not be inconsistent with the guidance and guidelines of the ruling party, policy solutions also mustn't be against existing laws and regulations, especially the Constitution, because activities of the state itself must not fall outside the framework of the Constitution and laws.

## **5.5. Consultation with related parties and policy draft revision**

### ***5.5.1. Consulting opinions from related parties***

In policy option selection process, competent authorities may organize public consultation to obtain opinions from related parties on the policy drafts. Public consultation with related parties is an important phase in the democratization of public policy enactment. Opinions from related parties allow the decision makers to have a more comprehensive view of the strengths and weaknesses of the policy draft.

Typically, upon consulting others' opinion, one will present the policy option expected to be selected; but, he or she may still ask for related parties' opinions on any problem at dispute without final conclusion in doing so.

Consulting related parties' opinions may be carried in following forms:

- Organize meetings with different groups of entities, present policy drafts, and collect opinions.
- Publish policy drafts on the public medias and obtain opinions and feedbacks during a certain period of time.
- Consult opinions from professional experts in the policy sector by organizing dialogs.

In fact, a policy draft, before being enacted, may have many discussing opinions, including those in agreement with, supplementing and further improving, or in disagreement with the draft, especially when it is relevant to policy problems with different implications. In this case, the policy formulators must have a clear

position and thorough knowledge of fundamental principle in selecting a policy (as mentioned above) to consider and receive contributing opinions. But, that doesn't mean that the policy formulators should rule out conflicting opinions; on the contrary, they should pay attention to, analyze and discuss in teams about reasonable elements that should be carefully considered among these conflicting opinions.

Sometimes, consulting opinions on policy drafts requires them to present their arguments and persuade related parties to make them understand the purpose and objectives of the government in the relevant policy. It is necessary, therefore, to obtain the agreement of related parties with policy objectives. In which case, policy drafts need to be introduced, presented, and explained to related parties so that they understand and share their opinions with the government.

Related parties' opinions on the policy drafts should be carefully considered, analyzed, and seriously accepted. The results of opinion consultation and acceptance should be public to the related parties to create confidence in Government.

### ***5.5.2. Policy draft revision***

After consulting opinions from related parties, carefully reviewing and discussing, competent authorities may revise the policy drafts to make sure that they are suitable to practical conditions in all necessary aspects and ensure the feasibility. Policy revision may be internally conducted by the policy formulators and decision-makers. Especially for policies of national secrecy, policy revision work is only limited to a small group of individuals.

For other ordinary policies, however, in today's context of widespread democratization, they should be revised publicly and informed to related parties or the public community. This will help build up public agreement with the policies when they are enacted. This is also the basis to form the agreement in future implementation of the policies.

## **5.6. Policy decision making**

### **5.6.1. Policy decision makers**

Making a policy decision is the final phase of policy formulation process. This phase is also called policy legislation and publication. Policy decision making powers are stipulated by laws.

Policy decision-makers are usually competent governmental agencies. Subject to the organization of state power implementation and legal regulations in different countries, policy decision-makers may be the agencies or individuals holding strategically important positions in the state system. In the U.S., for example, for policies in a secret agenda or anti-crisis policies, decision making powers are vested in the President or certain members of National Security Council. In the area of diplomatic affairs, most of security treaties and relationship agreements are decided by the President of the State and his or her subordinate system.<sup>26</sup> For other policies, an important agency in the system will typically decide the policy in a collective manner. In this case, policy option selection is usually presented for exchange and discussion and decided by the majority of members in the competent authority. Individuals or competent authorities vested with the power to select policy options in decision-making process will also have to pay attention to different aspects such as natural conditions, socio-economic development, and so on, of the nation or region(s), even the movement of different groups of interests in the society.

Policy decisions made by these agencies are normally based on opinions advised by subordinate agencies in the state system; therefore, developing policy advisory qualifications of the staff of strategic leaders plays a very important role in enhancing the quality of national public policies.

In Vietnam, most of policy decisions are made by the National Assembly, Government, Ministries (and Ministerial agencies) and provincial governments.

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<sup>26</sup> See Le Vinh Danh (2001), pg.273-274.



According to the 2013 Constitution, the National Assembly has the following tasks and powers: “To decide on fundamental national financial and monetary policies; to introduce, change or abolish taxes; to decide on the division of revenues and expenditures between the central and local budgets; to decide on the safe limits for national, public and government debts; to decide on state budget estimates and the allocation of the central budget; and to approve the final accounts of the state budget; To decide on state policies on ethnicities and religion; to decide on problems of war and peace; to determine states of emergency and other special measures to ensure national defense and security; to decide on fundamental foreign policies”. Policies decided by the National Assembly are often prepared and submitted by the Government. Article 96 of the 2013 Constitution defines that the Government has the task to propose and formulate policies to be submitted to the National Assembly. The Government itself is an important policy entity. In existing regulations, there are many national policies decided by the Government; for example, Article 19 of the Law on Organization of the Government (2001) states that the Government decides “specific policies on socio-economic development, finance, monetary problems as well as important problems on defense, security and external relations;” Ministries and ministerial agencies select and decide policies in their scope of management within their competence as stipulated by laws.

### ***5.6.2. Conditions for making policy decisions***

In fact, the policy formulators don't always have sufficient and necessary bases to consider and select absolutely optimal options. The optimum of the selected policy option is just relative in the permissible context. In other words, how to make a policy decision depends on following conditions:

+ Information condition: Insufficient information will result in failure to provide the decision makers a comprehensive view over the policy options, sometimes important aspects may be missed as a result of insufficient information. In fact, collected information depends not only on information reflection capability of the affected and interested parties, but also the qualifications and awareness of responsibility of the collecting agents. Due to time limits, there is sometimes insufficient budget to conduct a careful investigation, or because of objective

causes such as the problem is confidential, etc. that necessary information is collected to a limited extent only. Then, decision making process will only be optimal for analyzing collected information.

+ Result of policy option assessment: If policy assessment phase is conducted in a serious, scientific and quality manner, it will provide important arguments for the policy decision makers. But, in fact, sometimes there isn't sufficient budget to conduct an ex ante assessment professionally, or it may be because of the shortage of competent personnel to conduct the assessment (which requires specialized techniques) or time resources; or perhaps ex ante assessment must be based on uncertain forecasts and assumptions; therefore, result of ex ante assessment is not a reliable basis for the decision-makers.

+ Support from the population and related parties: In many cases, support from the population and related parties has a significant influence on the decision makers, making them more confident in authorizing a policy draft that is highly agreed with. On the contrary, it is shown that decision makers often don't want to take risks in making a decision that is strongly opposed by everyone.

+ Qualifications and judgments of the decision makers: This is an important element for the authorized persons to make the final decision. Knowledge, practical experience, and firm judgments are necessary conditions to a decision maker. When one lacks the knowledge and experience, he or she may make an imperfect, inappropriate decision. Sometimes, one may have professional capabilities but he or she is such a hesitant, resistant to responsibilities, and indecisive person that a mere opposition or different opinion may make him or her become hesitant, which results in the delay or non-enactment of the policy.

Aforementioned conditions are elements that have considerable influence on policy decision making process.

### ***5.6.3. The influence of lobby on policy decision-making process***

Lobby is understood as a set of systematic activities to approach, persuade, and influence decision-making process by legislative and executive agencies, deputies, officials, and other authorized persons in the state system in order to

obtain their support or non-support with respect to a policy or for purpose of public welfare or group or individual interests<sup>27</sup>.

In many countries in the world such as the United States, United Kingdom, and some European states, lobby is legally recognized. In fact, lobby in these countries has a great influence on the National Assemblies and Governments in all phases in the development of laws and formation of internal and external policies. Lobby is the process of making proposals to the government to influence policy and decision-making process.

Lobby is explicitly recognized in legal documents as having a legitimate purpose and positive role and influence on government operations in general and policy formulation process in particular.

Lobby is not a mandatory procedure of policy/decision making process, but it is effective to policy/decision making process by authorized persons. This is because lobby provides the authorized persons a comprehensive, multi-facet view with sufficient information, evidence, as well as opinions and proposals from the voters and society on the problem that is being considered and decided, on that basis, one may make a decision that is favorable to the society, voters, or groups of interest, etc. Therefore, it can be said that lobby is the “backstage” activity that has a supplemental role and powerful influence on all phases of decision-making process.

The existence of lobby in all phases of policy development process reflects not only self-interests of the lobbyists, but also legitimate needs of the government and policy activists. In its relation to the National Assembly and Government, lobby is also the reflection, supervision, restrain, and balance of groups of interests and population over public agencies.

Although lobby is an essential process in political life of developed countries, there are still certain limitations: *Firstly*, “a lobby process must be financially supported to pay for activities of surveying, collecting information, and influencing; but, money associated with political power will raise threats of faction, distortion of democracy, opportunities stolen from disadvantageous groups that are

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<sup>27</sup> Conference materials: Lobby - Practice and Laws – 2006, [http://speri.org/upload/medias/file\\_1296367125.pdf](http://speri.org/upload/medias/file_1296367125.pdf)

entitled to speak in a decision-making process”<sup>28</sup>. *Secondly*, non-stop development of lobby activities is also the environment for corruption and bribery acts behind the political stage.

#### ***5.6.4. Policy publication and communication***

A policy may be enacted in a variety of forms. Normally, a policy is enacted by a decision of the state, which may be in form of a statutory document (Law, decree, decision, circular, etc.). But, contents of the policy may also be demonstrated in various forms such as program, action plan, an organization's report, or a leader's declaration that is then organized and implemented by his or her organization.

For such a policy to be applied in real life, it needs to be published so that related people, especially those affected by such a policy and those with responsibilities to implement the policy to know and orient their actions. Announcement of a public policy can be carried in various manners depending on the nature of the policy to be announced. Most of public policies are publicly published while some policies, for certain reasons, may not (for example, security & national defense policy of a country). Normally, when a policy is authorized by competent agencies, it will be specified by implementation guidance and official announcement on the public media. In some cases when there isn't sufficient information or information hasn't been reviewed, the publication of a policy may not be carried out in a public manner.<sup>29</sup>

The propaganda and communication of policies to policy implementing entities and subjects directly affected by the policy have an important role. In fact, it is shown that many policies are well enacted but fail to be effectively implemented because of lacking the support from policy subjects in particular and society in general. The propaganda and communication of policies not only help related parties understand their roles, rights, and obligations, but, in the implementation of the policy, it also serves as the basis for them to monitor policy

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<sup>28</sup> Nguyen Chi Dung, “Lobby” in legislation process of foreign countries and trends in Vietnam”, Legislative Study, Problem 83, 9/2006

<sup>29</sup> See Le Vinh Danh (2001), pg.280.

implementing organizations and provide feedbacks to the government for timely adjustments.

## Chapter 6

# QUALIFICATIONS OF PUBLIC SERVANTS IN PUBLIC POLICY FORMULATION

### 6.1. Required qualifications in policy formulation process

In the most common sense, an official's capability in public policy formulation is his or her analysis, preparation, and determination of a policy that is potentially influencing the society. An official's capability in policy formulation process includes following fundamental capabilities:

#### 6.1.1. Policy problem analysis capability

Policy problem analysis capability has a very important meaning in public policy formulation as it reflects the abilities to collect information, analyze theoretical background and data relevant to the problem to be addressed by the policy. Policy problem analysis capability comprises of following elements:

##### (i) Information collection

Information is important input for policy formulation and analysis process that decides the quality of policy problem analysis, ensures that policy problem is identified appropriately, and clarify the nature (scale, scope, characteristics, etc.), causes, especially root causes, of the problem, and consequences of the policy problem, which are the reliable bases for forming policy objectives and solutions. Therefore, collecting and processing information in analyzing the policy problem is decisive to the analysis of the problem.

*Information collection:* preliminary information of the policy problem is collected in the initial phase of determining the demand for policy, reflected by the collection of available information as reported by the people and public media, etc. In official policy preparation phase, information is collected, supplemented, and completed. The agency assigned to prepare the policy must organize further research and collection of information by two basic means: field research and literature research.

*Field research:* An important mean to collect practical and reliable information is organizing a field research. To do this, the agency assigned to prepare the policy organizes a research team to visit the places under the influence

of the problem, then conduct a survey to collect opinions from related people, observe the site, record, take photos, and film a video, if necessary, and collect other evidence for purpose of analyzing the problem.

Field research is carried out through following activities:

- Organize meetings to collect opinions
- Conduct intensive interview and make records
- Prepare questionnaires and distribute them to related parties
- Distribute survey sheets.
- Receive information over the telephone and via email, etc.

*Literature research:* Literature research is the review, reference, and research of officially published materials or internal documents to seek for information directly or indirectly related to the policy problems, thereby generating the insights into problem analysis methods as well as solutions to the problems of interest.

There are many types of materials that can provide the policy formulators with useful information such as newspapers, scientific publications that can provide methodologies to analyze the problems; materials that reflect current situation regarding the problems provide necessary information to better understand the nature, characteristics, scope, trends, or impact of the problems on the society. Particularly, it is necessary to collect information containing actual statistics of the past and present conditions of the problem, constituting an important practical basis to conduct a quantitative analysis of different aspects of the problem.

Due to the diversity and multi-facets of information on the policy problem, the officials should first establish the guidance. Specifically, collected information must focus on following matters:

- Describe the nature and scope of the social problem being addressed by the policy;
- Establish the basis to explain the necessity of enacting the policy;
- Prove the effectiveness of the policy;
- Point out social impacts when the policy is enacted.

Information comprises of quantitative and qualitative information.

- Quantitative information collection will be helpful to assess the problem by specific unit. Today, collecting and summarizing statistic data has become an indispensable tool in policy formulation and resource management. A problem must be provided with accurate information as well as the ability to “read” such information. For example, quantity of dead people caused by cancer in our country has been increasing continuously over the past years, which raises a serious question on environmental pollution, food safety and sanitation, etc.

- Qualitative information collection is widely used in the area of social science, involving the methods based on the analysis and assessment of typical cases, interview, research of specific groups, or investigation of factors that affect the policy, and so on. Besides, in collecting the information, it is necessary to pay attention to learn from foreign countries' experience.

Regarding the entities that collect information, for executive officials, information collection is dependent on assigned tasks, while for leaders and managers, it is both more favorable and difficult (as information is collected across many intermediary levels, it is easily distorted or misled); therefore, it is necessary to develop a professional, scientific information collection plan to make sure that the collection is purposeful, accurate, and strictly compliant with policy formulation process.

For information collection carried out by leaders and managers, in addition to field information, it is very important that they collect information from written reports, documents, opinions, and recommendations of their subordinates. However, these methods contain potential risks. Thus, the leaders, in addition to closely monitoring and visiting the sites, must also “know” to listen to their subordinates' opinions, have the ability to screen and select accurate, appropriate information.

*(ii) Analyzing information:*

After setting up an information system, the key matter here is how to process this information adequately. This depends on public servants' ability to analyze information. The collection of information and data is closely associated with the question as to which inputs are important to the analysis of the policy problem. Based on such information, policy makers use scientific research methods to



analyze the policy problem in accordance with established requirements. Commonly used analysis methods to analyze the problem are analysis, summary, statistical, and comparison methods, etc.

To analyze the policy problem on basis of collected information, one must answer following basic questions:

- When did the problem arise? How were the scope and extent of the problem? Who are impacted by problem? How is the impact?
- Which are causes of the problem? Which are root causes of the problem?
- Without the policy, which will be the consequences caused by the problem? How is the development trend of the problem? To which level adverse effects of the problem will rise without the policy?

Generally, in analyzing information, public servants need to have knowledge foundation, experience, and objective and prudent attitudes.

(ii) Summary capability

Facing a diversified, multi-faceted information system, in addition to analyzing capacity, public servants must also be capable of summarizing information to develop an overall, logical, and consistent view over the problem to propose an appropriate policy.

Summary capability in policy formulation process is reflected by the fact that, on the basis of specific analyses, public servants will combine separate factors into a single one to correctly perceive and identify the problem, which is the basis of formulating the options and solutions to resolve the policy problem.

Summary capability helps public servants correctly assess and identify the problem and causes thereof, and then propose suitable and feasible solutions with firm basis.

**6.1.2. Conceptualization capability**

This is the ability to draft out solutions to resolve the problem and present original concepts, which may be rough but relatively accurate, of the policy. This largely depends on public servants' imagining and visualizing abilities.

Though public activities must fall within the framework of existing laws, they are also constrained by objective and subjective conditions. But, that doesn't

eliminate public servants' creativity or innovation, which is very necessary especially to the field of public policy formulation.

For the creativity to neither be constrained nor infeasible, public servants' conceptualization capability must focus on:

- Describing the problem to be resolved;
- Visualizing causes of the problem;
- Shaping the objectives of the policy in resolving the problem;
- Drafting out solutions to reach desirable objectives.

Public servants' conceptualization capability is demonstrated in following basic aspects:

(i) Sensitivity to information

For the same information, different people react differently. That depends on each person's perception, interests, attention, and ability to connect ideas. This is generally called the sensitivity to information. For a public servant, he or she must possess this sensitivity especially to information in his or her business sector or assignments.

(ii) Judgment capability

This is the capability to identify the correctness - wrongness and movement trends of objects and phenomena. Judgment capability reflects a public servant's experience, vision, knowledge, and competence. This capability is considerably decisive on the success of each public servant in his or her career.

To have a good judgment capability, one must develop the foundation of critical thinking and the ability to assess the problems as well as arrange events in a logical and rational manner.

In addition, judgment capability also includes the ability to “screen” immaterial events and avoid being influenced by them in such a manner that he or she may forget core aspects of the problem. This is especially true in case of time urgency.

However, it isn't absolute. In analysis process, a public servant needs to improve his or her sensitivity to even simple information, which is hidden behind more prominent information, to judge a problem correctly. In fact, each problem, object, or phenomenon is perceived and judged differently, which results in

information “noise”. Judgment capability always means that a public servant must be attentive and willing to accept new ideas.

(iii) Creativity

This is a public servant's ability to produce new, valuable ideas, both in theoretical and practical terms.

Creativity exists in every activity of human life (economy, policy, military, culture, science, etc.). In the field of state administration, management activities are carried out in the legal framework. However, legal regulations only provide a legal framework, orientations, or remedies, while the movements of administrative relations are very diversified. This is a wide space that requires the creativity, and also the basis for policies to take their effects.

Each public servant's creativity is different to many levels, but it is only utilized when public servant is self-aware of training and preparing pre-conditions for creativity.

Besides, whether creativity can be transformed into actual results or not depends on external conditions and circumstances. For example, Mr. Kim Ngoc's idea of allocating land to agricultural households in the 1970s was a manifest of revolutionist creativity originating from actual conditions. However, the conditions, context, and guidelines in the American resistance era didn't allow such an allocation idea, and the idea owner himself was very strictly disciplined.

**6.1.3. Design capability**

The capability to design a policy means that it can potentially transform the idea into a specific policy.

It can be affirmed that in the fair formulation of public policy, design capability plays a crucial role. If contents of a policy are not designed adequately, scientifically and rationally, it will be very difficult to realize ideas. This is because:

*First*, an inadequacy designed policy will make it difficult for affected entities to understand and to implement its contents.

*Second*, the ability to grasp and apply the policy largely depends on how it is designed. If a policy is analyzed and developed into a system of regulations on a group of subjects and proper communication measures are carried so that the

subjects can easily grasp and understand the policy, and it contains few reference to other policies, then public servants (policy formulators) have developed a policy that is closely connected to and easily welcomed by the society. That means they have been successful. If otherwise, the results will be contrary.

*Third*, the design of contents of a policy (objectives, solutions) is also the process in which the formulators have to face with specific problems. In other words, when they start to transform ideas into policy contents, they must also start analyzing and presenting increasingly specific drafts as the pre-condition for their future decision.

Besides, it is necessary to pay a careful attention to the preparation process. Whether the formulators prepare it by themselves or assign other public servants to do so, they must be aware that the policy preparers are those that transform ideas into written regulations.

Although many still separate between content and format, in fact, they are closely related in the policy formulation process. Accordingly, a minor modification of a word can result in a significant change in content. For example: “District” indicates the scope of impact is a specific district as an administrative area, while “district-level” covers the districts, towns, and cities of a province. Therefore, the preparers must have the ability to express ideas by using appropriate words.

#### ***6.1.4. Assessment capability***

It isn't a simple task because it is very difficult to assess a policy comprehensively and fully when it hasn't been enacted yet. However, this means designing to predict the outcomes and potential risks that can occur in order to prepare preventive and solving measures.

For a public servant, policy assessment capability means an advanced level of his or her working competence, and this capability is based on his or her knowledge, experience, and personalities.

Assessing a policy is the ability to consider the policy fully and accurately; therefore, public servant must have a relatively wide and in-depth knowledge of certain fields. Knowledge allows public servant to link information and recognize aspects that others cannot.

Analysis capability needs to be widely used in the assessment of policy solutions as well as selection of policy options. In conducting a cost-benefit analysis for an expected policy, a public servant must have necessary knowledge to apply in analyzing policy options to be able to select the optimal one.

A public servant's past experience is especial meaningful to conduct an ex ante assessment of a policy as it provides him or her with a hunch about proposed solutions, consequences that may occur, as well as potential impacts of the policy.

#### ***6.1.5. Decision making capability***

Making a decision is a highlighted step in policy formulation process. It is the result of a whole preparation process and leads to following implementation process. This capability determines the appropriateness, timeliness, and feasibility of a policy.

According to the author of Decision Making, a decision making process consists of 5 steps:

- Establish the context for success;
- Recognize the problem reasonably;
- Propose solutions;
- Assess solutions;
- Select the most feasible option to make a decision.

Separately, two initial steps are corresponding to analysis and conceptualization capabilities of a public servant.

Step 3 and Step 4 correspond to his or her design capability.

Step 5 corresponds to decision making capability.

Decision making capability reflects the ability to choose the right moment, perceive the timeliness, feasibility, and impacts of the policy on the society, as well as a public servant's determination. In this step, one must take active steps to create the context (or conditions) to present a persuasive policy. Not only that, the decision making entity needs to be careful with *uncertain problems* or *human weaknesses*, etc. These are problems that should be seriously considered. It can be seen that in Vietnamese society, long-lasting cultural traditions and today's society are having considerable impacts on a public servant's decision making capability.

Here, it should be noted that decision making is a phase of the policy formulation process. It includes a series of tasks to be taken in a period of time instead of a brief interval. Therefore, public servants (normally leaders, managers) must prepare themselves with necessary capabilities to make sure that they can make decisions on and implement the policies conveniently in practice. Specifically:

- Be assertive and unhesitant at key moments;
- Assign tasks clearly and reasonably;
- Thoroughly understand and allocate resources in a reasonable manner and ensure a backup plan;
- Calculate time, ensure the schedule, and make sure time allocated for subjects to be implemented;
- Establish information channels and make sure a thorough reporting process;
- Be always ready to accept and develop measures to resolve arisen problems;
- Handle problems in a timely manner.

#### ***6.1.6. Professional capabilities***

Public policies are management tools of the State in every field of the social life, covering a wide range of scopes; therefore, they are much diversified. Each field has unique characteristics that are associated with specific expertise. Contents of the policy must be closely associated with relevant fields of expertise. Therefore, professional capabilities of public servants, especially those directly involved in preparing the policies, are very important. These people must have necessary knowledge and skills to understand the policy problems, analyze causes of the problems, and have sufficient in-depth knowledge to propose solutions that are suitable to the specific fields targeted by the policy. For example, to formulate the policy on information technology development, there must be the involvement of experts in the fields to know which problems to be resolved are and determine specific solutions to develop the technology in the context of fast development in the field and impacts of IT integration trends.

However, not all public servants in a management field have in-depth knowledge of matters in their field; therefore, mobilizing the participation of highly qualified experts in the relevant area of policy preparation is necessary to provide those public servants with technical assistance. But, there are cases when public servants must possess fundamental knowledge, sensitivity, and critical thinking ability to grasp and select contents required for the policy.

#### ***6.1.7. People mobilization and connection ability***

The policy formulators (public servants) must do something to realize ideas into specific, feasible, and quickly-implemented regulations to improve social life. They must be able to analyze the policy problems, define policy objectives accurately, and especially select the most reasonable policy option. To do so, it is necessary to propose many options representing different possibilities.

In any phase, mobilizing the participation of surrounding people is important. This is because no matter how competent and responsible a public servant is, his or her qualifications are still limited to a certain extent.

In the process of policy preparation, one can mobilize the participation of such parties as follows:

- + People authorized to allocate resources and have a decisive voice;
- + Potential beneficiaries of the expected policy;
- + Experts;
- + Protesters (though this may delay preparation time, but engaging their participation will help us better understand opposing opinions and may mitigate the opposition when the policy is enacted);
- + Supporters.

One of the best ways is creating specialized teams (Editing Committee, Drafting Committee, etc.) to take advantages of many people's opinions. In fact, this is a mean to generate many options and solutions to a problem because “combined knowledge and experience of many people will create more ideas than relying on any individual alone, no matter how smart he or she is” [Decision Making].

The variety of options will allow us to make appropriate, reasonable, and objective decisions and facilitate conditions for innovative ideas as well as listen to

opponency. Teamwork and public consultation help the formulators make a relatively complete list of options. In addition, one cannot separate from the role of team knowledge in conducting an assessment. One can even invite reputable and objective individuals in the public to give their comments. If one can do this, he or she can show the knowledge required of a public servant.

Also according to the author of Decision Making, for a team to work creatively and effectively, team members must have following awareness:

- Each team member must respect others;
- Each should listen to others' opinions with an objective and equal attitude;
- Everyone has the right to protest others' assumptions;
- Everyone has the right to raise their voice;
- Never force others to accept an individual's own perceptions; one must be flexible and gentle;
- One should study and learn from opposing opinions;
- Only criticize ideas and assumptions, do not criticize individuals;
- Accept predicted risks;
- Learn and extract experience lessons from failures;
- Encourage an open and humorous attitude;
- Make sure that arguments are constructive and improve the abilities to negotiate and harmonize;
- Consider all successes as common results of the team.

#### ***6.1.8. Communication and presentation capability***

In policy formulation process, public servants must always communicate with related parties to collect information, exchange ideas, and persuade others about what they expect to design in the policy. Therefore, communication and presentation capability is necessary and even decisive in some cases.

In conducting an analysis to identify the policy problems, public servants must be capable of communicating to collect information related to current situation, especially in conducting a survey and interview with related subjects.

In the process of policy preparation, the ability to communicate with colleagues, experts, and other parties related to the policy problem such as main



beneficiaries, affected people, etc. is very important to seek suitable and feasible solutions.

In assessing and selecting the policy option, communication and presentation capability will help public servants take advantages of community efforts to seek the best option and make sure that they can personally argue to defend what they think is right.

Reporting to superiors or defending the policy before authorized people to enact the policy requires a great ability to present to explain the policy drafts as well as the ability to listen to feedbacks and learning attitude to accept reasonable ideas to improve the policy.

#### ***6.1.9. Experience***

Actual experience is always highly appraised in public affair activities and an indispensable element to become a policy formulator. Though we are trying to achieve the objective that average age of officers, civil servants is younger, experience is always valuable. Past successes and failures are the basis for future actions. Past mistakes may help minimize future mistakes.

Public servants that have actual experience in the phases of policy formulation and have been directly participating in specific tasks will be able to accumulate useful lessons to formulate a new policy. They are capable of quickly feeling current state of the urgent problem in the society. Actual experience also allows public servants to know how to exploit necessary information to identify the policy problems. They will be more knowledgeable in designing contents of a policy if they know to think, arrange, and present contents of the policy drafts.

Only experience people may have the capability to assess a policy in a comprehensive and thorough manner. In assessing a policy, a public servant learns from his or her experience situations that he or she expects to happen in implementing that policy actually, and which consequences there may be in current context, which the responses are, and how to resolve it. Therefore, the assessment conducted by an experienced public servant is usually highly accurate and predictive.

#### ***6.1.10. Policy formulator's attitude***

In many cases, a policy formulator's attitude has a significant meaning to quality of the policy to be enacted. A policy formulator's attitude means his seriousness, high sense of responsibility, readiness, willingness to accept difficulties, objectivity, integrity, empathy with society's urgent problems, and creativity, i.e. he or she dares to think and dares to do for public interests of the community.

A policy formulator's attitude must first include:

- Sense of responsibility: shown when a public servant is highly responsible for the proposed policy, final results of which, as well as positive and negative impacts of the policy on the society. If a public servant lacks sense of responsibility in any phase in policy formulation process, the resulting consequence may be unexpected. For example, if causes of a problem are not carefully considered, proposed solutions may not resolve the causes, but instead make them worse.

- Innovating attitude: shown when a public servant is always ready to accept new, innovative ideas. In addition to complying with available procedures, regulations, and processes, a public servant must be sensitive to the rapidly changing environment and have sense of creativity and innovation to adapt to changes. Lacking innovating attitude, he or she may present solutions that aren't corresponding to the management practices and technologies. These solutions aren't wrong, but they cannot effectively resolve the problem when environment changes.

## **6.2. Development of public servants' qualifications in public policy formulation**

Qualifications of public servants are the core elements of public policy formulation. These qualifications depend on individual characteristics and the education in which public servants have been learning, as well as their working environment, cultural traditions, private life, etc. In which, environment plays a very important role. Actually, immediately from the date of being employed into the state system, public servants have certain capabilities. However, they are just “rough” or potential. Moreover, not anyone has all necessary capabilities; some are strong with some capabilities while others aren't. For example, an officer can do

well specific, technical tasks, but he has a weak creativity. The managers need to know how to assign public servants to the tasks that match their strengths. However, to become a good policy formulator, one needs to possess aforementioned capabilities in full. So, he or she should train and improve his or her qualifications to meet requirements on the assigned tasks. One only develops his or her qualifications over time, by learning, studying, and training, through difficulties and experience.

Basic means of developing qualifications depend on individual's efforts as well as human resource training and allocation practices by the leaders.

Individually, a public servant can improve his or her own qualifications by:

- Researching the theories and case studies: No one has full knowledge of problems arising in a field or area within his or her administration. Therefore, researching the theories and practical case studies related to the problem to be intervened with the state policy is very important. A person's experience may be supplemented by researching previous case studies. These cases are summarized from published literature. In practice, one cannot become a good policy formulator if he or she is reluctant to read literature, think, and research. He or she doesn't even have necessary knowledge and they will advise on enacting policies that lack theoretical background, do not comply with current practices, are costly of state resources, and more importantly, such policies may cause adverse effects not expected by the State.

- Learning from predecessors' experience: Experience at work is valuable to policy formulators. However, not every officer has necessary experience. Moreover, each policy has its specific characteristics, or the context and conditions of each policy are always changing. Therefore, in addition to actual experience that one has, learning from predecessors' experience is very important. To be able to learn meaningful lessons from predecessors, one must take a modest, learning attitude, and know how to ask questions, clearly understand and exploit multi-facet aspects of the practice given by the predecessors.

Regarding the organizations, they should develop their public servants' qualifications by:

- Assigning them to attend training courses about necessary knowledge and skills: Today, with the advancements of science, including policy science, there are many opportunities in which public servants can narrow time period required to do research by attending training courses about necessary knowledge and skills offered by people with competence and in-depth knowledge in the field of policy formulation. Therefore, organizations where public servants work should encourage and facilitate conditions for them to attend these courses. Improving public servants' qualifications will help improve the organization's capabilities in formulating public policies.

- Inviting experts to present practical experience in policy formulation: Enhancing public servants' qualifications or experience can be carried out by inviting researchers of policy case studies or experienced specialists to make a presentation. Case studies can be viewed from a researcher's perspective with an objective approach to current practices. For a policy formulation practitioner, presenting case studies may be subject to his or her subjective opinions. Therefore, in conducting case studies on practical reports, one should pay attention to different approaches of the presenter. Especially, one must be sensitive in assessing how truthful the presenter is. It is important that, however, each participant must learn from the course for purpose of his or her business in the future.

- Rotating public servants over different positions so that one can participate in different phases of policy formulation process: This is the method of offering actual opportunities for the officers to approach different phases of policy formulation process; thereby, they will actually experience each phase of the process and develop better awareness of the connection between steps in the process, higher sense of responsibility in performing their duties, and sense of teamwork and active participation in policy formulation process as a highly systematic one.

- Training and assisting public servants with their duties: In addition to self-learning and self-training activities, leaders and managers should pay attention to training their subordinates. There is nothing better than assigning duties and allowing young, newly recruited officers to do the jobs, and paying attention, monitoring and speeding up, and instructing them through the process. On that

basis, their will, determination, knowledge, and experience may be trained and transformed into actual qualifications.

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**JICA-NAPA PROJECT  
MASTER PROGRAM OF PUBLIC POLICY**

**COURSE**

**POLITICS IN PUBLIC POLICY**

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## CHAPTER I: THE POLITICAL SUBJECT, CONTENT AND RESEARCH METHODOLOGY IN PUBLIC POLICY

### I. General concepts

#### 1. *The concepts of public policy*

- In essence, public policy is the basic tool, the primary and official means of implementing and expressing state power – the power of the ruling class.

- Public policy is the primary means of implementing and expressing the interests of the ruling class and social forces.

- While in essence, public policy is a tool used by the ruling class or ruling force to realize their interest, as it is promulgated by the State – which is public power - it always has to meet the requirement of fairness (at least in formality) among different social classes and forces.

- To every country – state: public policy is a multi-facet and multi-leveled system.

- Regarding issues that public policy is to address: Public policy includes a sequence of cycles in which each cycle comprises of the following fundamental stages:

+ Policy formulation: This is an important stage of a policy cycle. Whether a policy meets the needs of practice or not, depends primarily on the policy making stage. An appropriate policy must meet the fundamental requirements of the policy making process, based on practice and come from practice. A public policy will not perform well if it is either far from practice or not based on practice. Only if a public policy is developed on basis of practical conditions and requirements, it may then contribute to resolve practical problems.

+ Policy implementation: This stage also plays an important role in the effectiveness and validity of policy. A policy that is appropriate but does not meet requirements during the process of implementation does

not have practical value. The implementation of policies means that all participants understand and follow the fundamental requirements of the policy.

+ Policy evaluation: This is the stage to evaluate the impacts of policy in practice, to point out the strengths and weaknesses of that policy, therefore suggest adjustments to make it more appropriate and continue to promote the practical effectiveness of a certain policy. It is also an important stage in the policy process in order to enable effective policies in practice.

Public policy is approached from different scientific approaches in which there are ways of understanding of the concept:

- Public policy is the activities that the government chooses to do or not to do. According to this approach, the activities that government does or do not do must have long-term and deep impacts. Therefore not all things that the government does or do not do are public policy.

- Public policy includes all activities of the government that have direct or indirect impacts on the life of its citizens.

- Empirical and practical studies show that a public policy implies contents that relate to one another and relate to or influence other policies, thus creates the systematic characteristic of public policy. For example, administration reform is a public policy in which there are: regime reform, administrative procedure reform, administrative apparatus reform, build and strengthen capacity of staff, officers and officials, public finance reform, administration modernization. Implementation of administration reform has connection with salary reform policy, finance – monetary policy. The above examples show the systematic characteristic of public policy.

- The history of social development has proved the rule of “spiral development”, which means that social development contains in itself a

characteristic of historical inheritance. As a part of society, the development of state and public policy is no exception of this rule; therefore, it proves once again the rightness of Marx's historical materialism of the state and society's development. That's why, public policy is sure to have its characteristic of historical inheritance.

- Public policy is always connected to the subjects that make and implement it. Even in theory, the studies of general topics of public policy must start from the policy of a certain country. Therefore, public policy always attaches itself with a (or several) particular country (or countries) with particular political, economic, cultural and social conditions. However, it should be noted that the scope of influence of public policy is not limited to one or several countries, but it should not be concluded that there is a common public policy for all countries.

In summary, public policy has the following basic characteristics: of the politics, of the community, practical in action, systematic, historical and attached to particular countries with particular political, economic, cultural and social conditions.

## *2. The concept of politics*

Politics is an area of the society, co-existing with the division of society into classes.

Many profound thinkers studied various aspects of politics:

- *Plato*: Politics is a royal art that directly connects heroic standards to smartness; their life connection is made in unity and the spirit of charity.

- *Bourgeois scholars*: Politics is a "theatre", in which there are plays, actors, audiences, stage scenery... In that theatre, everyone plays a particular role whether they are aware of it or not. But the existence of that theatre does not depend on those individuals. In that "political

theatre”, although there is a director, there are sudden inspirations during a performance, making politics a very unique and diversified life.

- *Mac Vaybe*: considers politics an aspiration to participate in power or power division, determining the position of each individual in a certain order.

- *Lenin*: The very essence of politics lies in the state government organization. Politics is means to participate in state’s activities, set out directions, formality, tasks, and activities for the state. Any social activity has its political characteristic if it is directly or indirectly connected to class interest.

In essence, politics is the area related to the interest of different social classes and groups... In that relation, the ruling class or ruling social force gains the state power to realize, preserve and protect the interest of their class or their social force.

- Originally and officially, state power is the public power of the whole society. Therefore, democracy is a requirement and the trend that every power subjects have to show and reach for (at least formally)

Regarding structure: Politics is a social area with multi-facet structure:

- Political Ideology – Political line
- Political regime – Constitution
- Political subjects – political system: Political party – State – political and social organizations;
- Political relationship: domestic – diplomatic

**Conclusion:** *Politics is an area of social life, representing the relationship among social classes, nations and countries in winning, holding, using and controlling the state power.*

## II. The subject and contents of the course

### 1. Subjects

Politics in public policy is the course that studies the nature and influential means of politics in the public process.

Political studies in public policy is aimed at a more thorough understanding of the areas that politics influences and controls the process of policy making, helping its participants more self-conscious, professional, thorough and effective in their operation.

### 2. Contents

a) *In essence*, the role and the influence of politics in public policy means the role and impacts of the subjects that hold state power – the official power bodies, directly issue and execute the implementation of public policies by the state bodies and state officials to issue, implement and evaluate public policies.

#### b) *The political influences on the policy process*

- The influence and impacts of political ideology, political lines on the making, implementing and evaluating policy;

- The influence and impacts of political regime on the policy process;

- The influence and impacts of political parties, state and political, social organizations on the policy process;

- The influence and impacts of domestic and diplomatic relations on the policy process;

- Democracy and fairness in the policy-making process

### 3 *The political influences on the policy process*

- The political system and the policy-making process

- The political system and policy

- State power in the policy implementation

### **III. Research Methodology**

- Empirical research: The course uses this methodology to study theories on the relationship between politics and public policies, especially the policy process, to clarify the impacts of political factors on public policy from theoretical perspectives. This has been discussed by many international researchers who discuss this issue. In Vietnam, it is not a new one either.
- Learning from practice: Using this methodology, the course provides international and domestic factual foundations at different periods in order to better clarify the multi-facet interrelation between politics and public policy.
- Analysis of case studies of the policy process: Some practical cases and specific policies are clarified in order to analyze and provide theoretical factual foundations for the impacts of political factors on public policies. A policy process including making, implementing, analyzing, and evaluating policy that is strongly influenced by political factors will be clarified in specific cases.

## **CHAPTER II: POLITICAL SYSTEM AND THE POLICY-FORMULATION PROCESS**

### **I. The role of political parties in the policy formulation process**

The political party is an institution which represents a class or a social group, operates on the basis of a certain ideology or political point of view with an aim to reach by means of seizing state power or by taking part in the execution of state power.

Political parties include ruling parties and non-ruling parties. In political science, ruling party is the political party that represents a ruling class to manage the state in order to serve the interest of this class.

V.I. Lenin first raised the concept of ruling party. The terms of Ruling party, Governing party have been used long ago in Western countries to show the role, the position and the responsibilities of a political party when it reaches power, distinguishing the party that seizes power with those Parties who do not have power in their hand, have not yet seized power, or stand at an opposite position. The ruling Party leads the government, making sure that all of its activities represent and serve to realize the thinking and direction of that Party, in accordance with the point of view and interests of the class which it represents. At present, there is no state, not even a bourgeois or proletarian state, that is not under the direct control of a certain political party.

Power, once gained, is the sharpest and strongest tool to realize the Party's line, roadmap and policies, securing party's leadership to the whole society. In its ruling manner, besides propaganda, education and persuasion, the Party leads the government to institutionalize its lines, guidelines and policies into Constitutions, laws, plans... and secure the Party's leadership to the whole society. Through its members in social institutions, the party transforms its resolutions into laws, management decisions, and action programs of the State bodies and social



organizations so that policies are brought into real life. The power of the ruling Party is the power of political leadership in which the ruling Party is at the centre.

The ruling Party plays an important role in establishing State machinery in which the key positions from central to local levels are determined, as well as the key positions in all components of the State Power system.

The activities of the ruling Party always directly influence the State's political sphere as well as the operation of the State machinery in association with the policy formulation process.

After winning an election, a political Party becomes the ruling party and controls all activities of the State machinery through members of parliament in lower house and upper house, who are the party's members. The operation of the State always complies with the leadership of the ruling party, specifies its objectives, translate the political program as well as interest into the national policy.

It is vital for the ruling party to put its ideology into the State's policies and decisions.

The primary way for the ruling Party to reinforce and preserve its ruling position is that its representatives who have leadership in the State organizations have to execute their action programs and fulfill their party's commitments that they made to citizens in their election campaign.

The resource that the ruling Party uses to keep its operation running is the training of human resource management. This work should be well planned, conducted regularly, continuously, effectively and with high quality.

When the ruling party has a certain role in the National Assembly, it is the latter that transfers the influence of the former onto the government or cabinet.

Moreover, through the congress or through direct voting, the election of the Chief of Executive body and local administrative offices are under the influence of the Ruling party.

Any policy made by the State is political in nature, that is, it is based on and serves the political line and guiding thoughts of the ruling party. Policy is a management tool of the State, aiming at goals set by the State, which always imply the nature and orientation of the ruling Party.

In capitalist countries, politics shows the relationship between classes, parties, including political parties and interest groups. The competition among parties forms the political environment in these countries. But the real political power lies in the hand of the ruling party (or party coalition) during that period of time. In parliamentary countries, the prime minister and cabinet are appointed by the party that has a majority of seats in the congress; therefore it is a matter of course that the State serves its political line. In presidential countries, although the president is the head of the country, holding supreme executive power and appointment of cabinet, all policies proposed by the government are to be approved by National Assembly (which usually means the party with majority of seats). As a result, even when the president is not a member of the party with majority of seats in the National Assembly, all Government's policies reflect the interest of this party. So the policies made by Government are always in accordance with the political line of current ruling party. It can be concluded that politics decides the policy contents as well as the selection of alternative policies being proposed.

In Vietnam, the Communist Party is the ruling party, leading the State to implement the country's strategic goals. The Party leads the State and the society by setting out its political programs, strategies and policy-orientations, which are the guidelines for the State to promulgate public policies. Public policies are issued by the state. These policies are the

realization of the party's line, strategies and policy orientation and the implementation of those lines and guidelines in practice. Public policies in Vietnam are often institutionalized into legal documents in order to create a legal basis for their implementation. These include unobligated, oriented and stimulating action schemes.

It is an indispensable requirement and also the task that citizens entrust in the party that it leads the state and the whole society. The party's leadership can be generalized into the following areas:

- The Party sets out different lines, principle guidelines and major policies for development in each period; the Party leads in organizing the state machinery; leading by monitoring the understanding and implementation of Party's line and state's laws, at the same time by bringing into play the role of Fatherland front, unions, social organizations and citizens in building, executing and monitoring public policies...

The Party is the leading force of the society, determining issues regarding the adoption of social development direction, political regime, and strategic goals for economic, cultural, national defense and security, and foreign affairs. Simultaneously, the Party sets out guidelines for the state to use power against tendencies that are harmful to the interest of the working people and social progress. The function of party's leadership is to set out the lines, policies and major oriented viewpoints and principles to build and protect the country's socialism, whereas the function of state is to execute its power by realizing party's lines into specific laws and policies, and execute the implementation. This is a system to execute the general power of citizens. State power is to execute and protect the power of working people; laws represent the will and power of citizens.

The state of Vietnam has gone through four amendments of its Constitution, which resulted in the change in the form of state machinery, but the power remained united and undivided. It is because the power

belongs to citizens and comes from citizens. Therefore the state is organized so that it executes public power, and this function of the state is to be respected. The party as well as the state only has one aim and reason-to-be, which are the nation's independence and people's freedom and happiness. Their functions may differ, but there is only one starting point and goal. Different from the capitalist political system, both the ruling party and state of socialist political system are loyal representatives for people's interest.

In the reforms of the party's leadership upon the state, in order to maintain the state as the true representative of people's power, the party decides to appoint different functions of party and state, and it leads the state by using democratic approach. Whether party's leadership or state's management, it is presented in society as subjects that implement what citizens have delegated authority to them. Promoting democracy is the best approach to not let the power of citizens and class turn into the power owned by a privileged group. It is required by reality that the party has to reinforce and enhance its leadership on the state, and at the same time leads the state in democratic approach.

A simple example indicating the role of the Party in formulating and developing a policy is when the policy on ethnicity is developed. Understanding fundamental principles of Marxism-Leninism on ethnic problem, from the very beginning, our Party and president Ho Chi Minh established strategic principles and guidelines for ethnic policy in Vietnam, i.e. unity, equality, mutual assistance among ethnic groups. It can be affirmed that our Party's policy on ethnicity is thoroughly understood and consistently implemented at all times. In a specific time frame of history, however, this policy has always been updated and revised to better meet the practical requirements and the development of the country.

With a belief that revolution is a non-stop process, in the renovation period, our Party's policy on ethnicity was both consistently implemented and flexibly adapted to requirements of development and integration to successfully resolve current and future ethnic problems in Vietnam.

From 4<sup>th</sup> to 10<sup>th</sup> National Congress of the Party, policy on ethnicity established by the Party focused on following key matters: The role of ethnic problem in the whole revolutionary cause; fundamental principles of a policy on ethnicity; material problems of a policy on ethnicity under specific circumstances.

The 7<sup>th</sup> plenum of the 9<sup>th</sup> Party Central Committee adopted the specific resolution on ethnic activities. This is the first specific resolution issued by our Party on this problem in the period of renovation, industrialization and modernization of the country. This resolution states: From the early days and during revolutionary movement, our Party always considers *ethnic problem and ethnic activities as well as the unity of ethnic groups as a matter of strategic significance to our revolution*. Based on the notions of Marxism - Leninism and Ho Chi Minh ideology on ethnicity, our Party has developed the guidelines and policy on ethnicity with following fundamental contents: “Equality, unity, and mutual assistance for development.” Over revolutionary periods, ethnic activities have made great achievements that contribute to the common revolutionary movement of the country. Based on an overall assessment of ethnicity and requirements under new circumstances, it is affirmed in the resolution that: Ethnicity and ethnic unity are not only strategically *fundamental and long-term* but also *urgent* problems of Vietnamese revolution. This is the first time that ethnic problem has been identified as strategically *fundamental and long-term* throughout the revolutionary development of our country, and as *urgent* by the Party. This is very

important because it indicates a strategic view and innovative thought in the national and international context of our Party in the renovation period.

The position of ethnic problem so identified by the Party is based on the characteristics of our national community of ethnic groups that is regarded as a component in the national development strategy. This is a very important basis to establish the principles as well as policies of our Party and state on ethnic problem in the context of globalization and international integration. Lenin once said: “national differences will keep for a very long time after the dictatorship of the proletariat is established on the world scale.”<sup>6</sup> This indicates that as long as the national and ethnic differences still exist, there continue to be nations as well as social and actual bases and potential threats of ethnic conflicts and disputes; therefore, ethnicity is still an emerging problem.

Based on the Party's guidelines and policies on ethnic problem, the State also focuses on formulating policies on economic development in areas where minority groups are living in order to take advantages of their potentials and strengths in a close association with the general development plan of the country, and involve them in the industrialization and modernization of the country. This is of special significance in implementing the policy on ethnicity under new context and circumstances, aiming at bringing about a material change in living conditions of minority groups. Besides, the State also focuses on implementing its social policies on education and training, culture, medical services, etc. to enhance capacities, facilitate the basis and opportunities for ethnic groups to engage in development process, and to continuously improve their material and spiritual lives; Policies on national defense and security are intended to consolidate strategic areas and resolve the problem of ethnic unity and

relationship among people, ethnic groups and nations under the globalization trend.

In summary, the ruling party plays an important role in formulating policies and is the fundamental body in developing important policies of a country, which then will be legalized by the state for the basis of practical application.

## **II. The role of state bodies in the policy formulation process**

In essence, public policies are considered the outputs of state management process, intellectual products created by its officers and civil servants, even a common product of the whole society. This is seen in the acceptance of the goals and implementation methods of public policies by people from every walk of life, as well as in the result of these public policies. If the goals of state's proposed public policies meet the wishes of citizens, it naturally goes into life. Otherwise, a policy that is unclear in its goal, unspecific, or not for the sake of a community will be harder to be accepted or low in feasibility.

Public policy is a tool for the state to executive its macro management on the economics and society. In order to keep socio-economic development in line with the set orientations, the state has to be consistent in its viewpoints or and stand-points; it has to build legal frameworks to keep all activities in it going on, and at the same time encourage subjects from various walks of life in society to actively take part in the movement to match the developmental requirements of different periods. Determining public policies is the exclusive power of state and state personnel.

The state's ability to issue and implement public policies is influenced by the following factors:

- Form of *State*: It is a federal or a unitary governmental system. The main characteristic of federal political structures regarding public

policies is the concurrent existence of two independent governments in one country. In federal countries, the two government levels are not tied to each other in a relationship of superior and subordinate, but the federal governments have more or less free right to act on issues at their level guaranteed by the Constitution. This is different from unitary countries or countries that have only one government level; local governments are subordinate to central government.

Vietnam is a single party country and its state power is united without any division. The State plays an important role in formulating public policies. Our State has issued a lot of important policies to develop the existing socialist-oriented market economy in Vietnam.

Developing the socialist-oriented market economy is one of existing fundamental matters in Vietnam. We have been affirming from the very beginning that the economy that we are constructing must be *state-controlled*. Following that thought, at the 10<sup>th</sup> National Congress, our Party put an emphasis on the necessity of “securing the role of economic management and regulation of the socialist legitimate state”<sup>(1)</sup>. The State's role to the economy in Vietnam not only results from common requirements for developing the market economy, but also originates from the *characteristics* of the socialist-oriented market economy.

In the development of our market economy, the State plays a great role in protecting *macro-stability for economic development and growth*. Therefore, the appropriateness, reasonableness and timeliness of policy formulation and State's capability to organize the implementation of macro-development policies are the prerequisites for such a consent. As the instruments to obtain social consent and, ultimately, social stability for economic development and growth, State's policies and laws must, on one hand, correctly reflect common needs of the society and all of



business entities, as well as respect the diversity of needs and interests of such entities on the other hand. Here is a typical example of the State's important role in formulating a policy. A proper policy will help to guarantee the growth of market economy; otherwise, it will become a constraint on it. In later 70s and early 80s of the 20<sup>th</sup> century in Vietnam, it was shown that: When we maintained the policy on a subsidized and centrally planned economy for too long, in which the State only recognized two basic components of the economy: state and collective, the economy fell into a crisis, poverty and backward situation. That subsidized and planned economy policy failed to take advantages of the strengths of all economic components and even became a barrier to the economic growth. Understanding the importance of the State in developing and formulating policies will be helpful to promote its role in developing the economy and stabilizing social and political lives in Vietnam in the new century.

Under current context of globalization, the international economic cooperation and integration among all countries will only be effective if it is initiated and supported by the State. Thanks to appropriate integration policies and its capability of well organizing the implementation thereof, the State is building up initial foundation and positively influencing the establishment of international relations. By representing the country in the preparation and adoption of international economic standards, agreements, protocols, etc., the State also offers business entities of the country advantageous positions in their international economic relations.

The State is also the key provider of education and training services. By using its education and training system that is consistently implemented and managed in a variety of forms (including public, non-public, joint venture, partnership with domestic and foreign partners, etc.), the State is providing the fundamental and qualified work-force to

businesses and providing corporate managers to all kinds of economic components. As such, the State can greatly and directly influence the enhancement of production capacity, the performance of the economic management, and the efficiency of the market economy in general.

*\*The relation between Legislative, Executive and Judiciary in the influence on public policies.*

Legislative, executive and judiciary bodies have close relationships in influencing the formulation and implementation of public policies. In the parliament system, the executive body includes members of parliament who are selected by the legislative body and only hold their position during a period when they receive the support of a majority of the legislatures. In presidential regime, the executive body is separated from the legislative body.

The separation between legislative and executive in the presidential regime and the merging of the two branches in the parliament regime result in serious relations in the policy-making process. The separation of power increases difficulty for the policy makers in the presidential regime. The members and Committees of Parliament have a positive role in the formulation of public policies, including the policies proposed by the presidents. Generally, in order to make sure he has the majority's support for those policies that need approval of the legislative body, the president has to negotiate with the congress members, making concession in exchange for the support, so that he can change the goals of policies. The active involvement of congress members in drafting law proposals triggers contradictory ideas to ones of legislative bodies; it also opens opportunities for interest groups and voters to intervene in the policy process can result in mixed or even contradicting policies.

In contrast, in the parliament regime, the executive body may not need the support of the legislative body for its policies because according

to the party's regulation of absolute in the parliament, it makes all members approve the policies proposed by legislative body. In some cases, there are negotiations or the parties request adjustment of the policy in exchange for support. However, the policy-making in parliament regime generally focuses on the executive body, always allowing the government to act if it needs to develop the policies.

The structure and role of judiciary body have their influence on the policy-making process as well. In a federal regime, an independent judiciary body is assigned to arbitrate the dispute on authority. In these countries, the judiciary body acts as an institution to control the abuse of powers in the issues related to policy. In the countries that do not have a federal system, the judicial bodies have more limited roles, allowing a larger space for policy makers to act upon.

It can be said that the executive structure has the biggest impact on the public policy formulation and implementation process, especially at the regional level. The concentration of power in the hands of just a few state bodies increases the consistency in formulating policies and allows making long-term policies. On the contrary, the decentralization of power increases the contradictions within a state body and causes lack of coordination; sometimes, policies may be issued based on the compromise among agencies rather than their quality or effectiveness. The independence of administrative apparatus from politicians and social groups also helps increase its power and effect in the public policy-making process. In order to be strong, a state administrative apparatus must have clear authority, expertise and vigorous support from politicians, but not their intervention in activities.

In states with strong administrative system, the position of the administrative apparatus is highly appreciated by the society. The administrative apparatus is established with the pure elite group who

plays an important role in the policy-making process. In the societies where administrative system of the state is traditionally weak, the administrative apparatus has quite a low position and lack the ability to resist the pressures from legislators as well as social groups; therefore the policies issued can be unclear and ineffective.

In several countries where corruption is prevalent, salary is low, and working condition is bad, the administrative apparatus usually lack capacity to solve complicated issues. If these conditions still exist in one country, the state will meet difficulties in making policies and implementing them as they wish.

The State of the Socialist Republic of Vietnam is the pillar of its political system. State power is united. There is division of roles, collaboration and control among different bodies in the implementation of legislative, executive and judiciary rights. The State issues laws; organizes and manages the society by laws and continuously increases socialist legislation. The organization and operation of the state machinery follow the principle of democratic centralism, assign and decentralize responsibilities, while ensuring the central consistent stewardship. It is the above-mentioned characteristics that influence the policy-making process in Vietnam.

The issuance and implementation of policies have high accordance among state bodies at different levels; conflicts of interests caused by public policies or the contradiction of authority to issue policies are few. However, because policy proposals are generally based on the local needs or depend on management goals of a certain sector, they usually do not consider the big picture, resulting in many incomprehensive policies. A typical example is that several ministries or sectors may propose different policies to address the same problem, whereas there are big problems to

which no ministry or sector proposes policies to address. This leads to a “gap” situation, some cases of which are not adjusted.

The suggestion to policy-making primarily comes from the consideration and analysis of practical situation and from the management needs of state bodies that are assigned the task of state management. The drafting of policies is usually undertaken by ministries or bodies at ministerial level and governmental bodies. There are few issued public policies that come from those who are influenced and affected. This is one of the fundamental reasons why some policies have low feasibility, or are implemented not as effectively as the managers have expected.

The involvement of socio-political organizations and citizens in the policy-making process is limited. The policy-making process is still closed; opinion poll from those who are directly influenced by the policies is limited, and often falls in formalism if there is any; the reception of opinions by ministries and sectors are not active yet. On the other hand, there is not a specific regulation on mobilizing the wisdom of citizens, experts and scientists into the policy-making process, thus limit perception of and solutions for problems.

### **III. The role of political and social organizations in the policy-formulation process.**

In order to have the ability to issue and implement the policies effectively, the state needs support from social groups. To an extent, these social groups can provide necessary support at certain level and in certain form depending their internal organization.

In today's civil society, the role of social organizations is increasing. In fact, the engagement and support from social groups and organizations will help to ensure the feasibility of a policy. Otherwise, without the support from relevant social groups and organizations, in many

circumstances, such a policy will only be meaningful on paper but unfeasible in practice. The unification among social groups creates a stable environment for public policies, facilitating their formation and promoting their effective implementation.

A civil society includes groups and entities that are not “constrained” by the government, including political organizations, trade associations, religious associations, media associations, charitable groups, civil organizations, and non-governmental organizations, etc. These organizations and entities all contribute to the social growth and have an influence on the relationship between the society and the government. It can be seen that democratization process is closely associated with the formation and development of a healthy civil society, and that is the nature of democracy. Democracy means, above all, that the state power belongs to the people and democratization process is, by nature, the process of transferring the state power to the people. The existence of a civil society does not exclude the existence of a state but, on the contrary, a state is very necessary to manage and make sure that such a civil society can exist and develop. A civilized society needs a stable and solid state.

In such a civil society, social organizations play a certain role to represent the voice of those involving in the management and development of the society. Promoting the role of social organizations is also helpful to improve people's sovereignty, especially in developing and reviewing policies. We have regulations on the role of the National Front in the opponency against propositions. This is another step toward improving the role and voice of social and socio-political organizations in policy formulation.

#### **IV. The role of press and public opinion in the policy-formulation process**

The press and public opinion also play an important role in the policy formulation as well as public policy evaluation. By raising practical issues, the press is an important channel of information to quickly address the demands and pressing problems from real life to leaders and managers. In the current society of multi-direction information, the role of press is becoming more important than ever before. Sometimes, thanks to the press those certain policy proposals are adjusted so that they are most appropriate. Also thanks to the press that the society is informed about the implementation of a certain policy in practice

The press is also an important channel to convey social evaluation of a certain state policy, thus showing leaders and managers the multi-facet influences of that policy in reality, including its advantages and disadvantages. Based on that multi-dimensional information, a policy may be revised to adapt to current circumstances. The more developed a society is, the more important the role of press and public opinions will be. In many countries, press is even considered as a body of power that has a significant influence on political life in that country. The press can direct public opinions to a certain extent.

In Vietnam, press is playing an increasingly important role as an effective communication channel. When the economy is growing, press is also innovating non-stop and becoming more and more dynamic and creative in its operations. The press in our country is closely following the social life and quickly providing the latest news and information, including guidelines and policies of the Party and State. It has a very crucial voice in planning, implementing and assessing a policy.

The press is increasingly growing and improving itself with positive elements and typical examples in the practices. It helps promote the national economy together with the world's growth as a whole. The press is an important link between businesses and policy regulators and formulators that helps the State to revise its policies and guidelines to better adapt to existing practices. The press also shares its sympathy with the combat against corruption, negative conduct and social evils. With increasing number of quality newspapers and e-newspapers, press is building up people's trust and making itself one of their essential needs.

The foremost mission of press is to satisfy the society's needs for information. The more modern a society is, the more important communicating information on mass media channels becomes, and therefore, the interdependence and mutual influence between mass media and society have been tightening. In today's blooming era of information, the positive role of media community has promoted the socialization of social supervision and opponency activities against policy formulation and implementation.

Through the press, people can raise their opinions and expectations regarding problems in the social life, thereby demonstrating their social supervision and opponency role. It can be said that the role and opponency function of the press is further strengthened and the public trust in the media agencies is also enhanced.

*Sincerity and objectivity* are characteristics, attributes, and conditions for the survival of the press, which are the first principle for the press to exercise its role of social management through its social supervision and opponency activities against policy formulation, implementation and assessment. V.I.Lenin always emphasized truth as the power of the press. When he was alive, president Ho Chi Minh often advised the journalists to be always truthful and consider it as the top



ethical standard for a revolutionary journalist. By looking at the truth for the purpose of social supervision and opponency, the press must report both successes and failures, constraints and difficulties. In order to tell and assess the truth, a writer is required to have a clear orientation and power of thought to be able to report a story sincerely and reveal the nature of information. It can be said that looking at the truth and assessing it appropriately is the concretization of social supervision and opponency function of the press.

*Publicity* is an inevitable trend that is an important indication of the democracy, in which the right of freedom of expression was expressively affirmed in the Foreword of the Law amending and supplementing a number of articles of the Law on Press (1999). An opinion expressed on the press can be commented on and discussed by many people from different viewpoints. Nevertheless, since press has a direct, considerable and widespread influence on the formation of public opinions, its publicity should be noted in 2 aspects: firstly, tell the truth after appropriately assessing the nature; and secondly, tell the truth to contribute to healthy public opinions. The press may not publish any information that may disclose national secret, confuse the public, or create opportunities for enemy forces to take advantage of. But, it is not acceptable to rely on the notion of “for healthy and peaceful public opinions” to restrict the publicity of the press.

*Generality* of the press is indicated by the fact that press release has a social-wide impact on different social classes and groups, and the satisfaction of public needs for information is always prioritized and considered as the measure of performance and capability of the press. The press is also a people's forum that must be adaptive to their intellectual level so that they can accept it. People not only want to receive information from the press in an inactive manner, they also want to

interact and send feedback on it positively. Educational function of the press is increasingly enhanced and contributes to raise people's knowledge and their interacting ability, which in turn enhances the accuracy of people's feedbacks, creating a healthier and more effective environment for social supervision and opponency of the press and public opinions. For the generality, the press contributes a large part to the assessment and review of state policies.

As such, press is an element and tool of especially great power in orienting public awareness and forming public opinions. Press is a very important force that contributes to the effectiveness of social opponency in the development of a truly democratic society, which helps enhance policy performance in developing the socialist-oriented market economy and stabilizing socio-politics.

So, press and public opinion play an important role in developing, formulating and assessing a policy. Through the press, leaders and managers can understand the significance of a policy in practice, then they can do something to improve the performance and make appropriate modifications to the policy.

## CHAPTER III: THE POLICIAL REGIME AND POLICY

### I. The legitimate regime and policy

A legitimate state is a state that appreciates the supremacy of the Constitutions and Laws. It is a state in which every body; organization and individual live and work according to Constitution and laws. A legitimate state has basic characteristics as follows:

*Firstly, a legitimate state is the centralization manifest of the democratic regime.* Democracy is both the nature of a legitimate state and a condition precedent for a state regime. The goal of a legitimate state is building up and implementing a democratic regime to make sure that political power belongs to the people. The people exercise their democratic rights in forms of direct or representative democracy.

*Secondly, a legitimate state is organized and functions in the framework of its Constitution and laws.* Constitution and laws always play the fundamental role of regulating all of the State operations and social activities and deciding the constitutionality and legality of each division and activity of the state system. Constitution is regarded as the instrument of highest validity, which is the basis for development of laws and sub-law documents, as well as the basis for organization and operation of the state system.

*Thirdly, a legitimate state respects, values and ensures human rights in all of its and social activities.* Human rights are criteria for assessing the rule of law of the state system. All of the state activities must be based on the respect and assurance of human rights, and facilitate conditions for people to exercise their rights in accordance with provisions of law. The relationship between an individual and the state is strictly defined in legal terms and on equal basis.

*Fourthly, the state power in a legitimate state is organized and exercised in accordance with the principles of democracy:*

*decentralization of power and control of power.* The nature and method of decentralizing and controlling the state power are diversified, subject to the state entities from country to country; however, they have one thing in common that the state power must be not placed in the hands of a single person or agency, but decentralized (divided) among the state agencies in exercising legislative power, executive power and judicial power. At the same time, the organization and exercise of powers must be strictly controlled by specific control regimes both inside and outside the state system. The control of state power is an essential requirement for a legitimate state to make sure that the state agencies conduct in accordance with law and do not abuse their powers in doing so.

*Fifthly, a legitimate state is associated with an appropriate regime for protection of the Constitution and law.* The foundation of a legitimate state is its Constitution and a democratic and equal statutory system. Therefore, a regime to protect the Constitution and law is always an essential condition to make sure that they are always respected, valued and strictly complied with. Forms and methods of protecting the Constitution and law may vary from country to country, but they all have the same target of protecting the supreme and imprescriptible status of the Constitution, eliminating any conduct against the letters and spirit of the Constitution, and relying less on the entities of such conduct.

Together with protecting the Constitution, a legitimate state requires the development and exercise of a truly democratic, transparent judicial system with integrity to maintain and protect legislation in all activities of the State and society.

*Sixthly, in a legitimate state, the state power is always restricted within relationships: State and economy; State and society.* In the State and economy relationship, the position, role, functions, and tasks of the State are determined by the nature and level of market economy models,

in which the State respects and promotes objective rules of the market and, through the market, regulates economic relations and remedies limitations and negative aspects of the market. The State does not do the function of economic organizations; instead, it has the duty to manage the economy in a macro scale, formulate policies, and contribute to set up a healthy and equal playground, facilitate conditions for economic organizations to grow.

In its relationship with society, the State uses the law to manage the society. It respects and values the position, role and autonomy of social structures (social organizations and communities). The relationship among the State, economy, and society is interactively and mutually regulated and dominated. The State cannot stand at a higher position than the economy and society. A legitimate state is inherently associated with the economy and society, exists to serve the economy and society to the extent of the Constitution and law. A legitimate state is a state that ensures the compliance of policies. Laws are the institutionalization of party's policies. The appreciation of laws execution also means the appreciation of policy implementation. Before a policy is issued and transmitted in to practice, it is first institutionalized in legal documents. It can be said that policy is the content, legal document is the interpretation of policy. There is no separation between laws and policy. Policy can only go into realization and be implemented seriously when it is detailed in legal documents. The higher law abiding awareness is, the stricter and clearer policies are to be guaranteed.

Therefore, the legitimate regime ensures that public policies are implemented fully and comprehensively in reality. The higher a legitimate regime is valued, the more consistently and effectively policies are practiced.

## II. Democratic regime and policy

According to the classics, democracy means that the power belongs to citizens. Citizens are the subjects that create history. Citizens decide for themselves their life and fortune. Marx and Engel put it that democracy is a form of state power which citizens should be able to organize and control. Lenin especially stressed the involvement of citizens in the management of the state. And according to President Ho Chi Minh, democracy means that citizens are the owner and they own. He attached importance to both position and ability of citizens as subjects, who are the owners of the society and the state.

Democracy is the political regime where power belongs to citizens. Citizens directly execute their power or appoint representatives to work in the state apparatus. There are two types of democracy: direct democracy in which citizens directly take part in major issues, and indirect democracy in which citizens select their representatives through election.

Socialist democracy is the essence of Vietnam's political regime. It is both the goal and the drive for country development, for the building and step by step completion of socialist democracy, ensuring that all state power belongs to citizens. Democracy must be executed in real life at every level and on every field through the operation of the State, which is elected by citizens, be institutionalized into laws and protected by laws.

Socialist democracy is the essence of the new social regime – the socialist society. Building a socialist society is one of the most long-term and critical tasks to *make sure the power belong to the people. To reach that goal, it is central to build and complete a socialist legitimate state that is really of the people, by the people and for the people.*

As affirmed above, democracy means that citizens are the owner and take part in the management of the State and society. Democracy in

policy formulation, implementation and evaluation means that citizens are allowed to take part in all stages of the policy process.

Policy formulation is a complicated process that requires adherence to various strict requirements of each regime and the point of view of each country, as well as of each developmental phase of history and the current socio-economic conditions. However, regardless of any process or regime, the principle of original meaning of policy must be respected and aimed at the interest of citizens, building a prosperous and civilized society and country. Therefore, in the context of globalization, intensive and comprehensive integration into the world economy, and the tendency of democratization and transparency in the current state management now is setting out new demands and requires policy-makers to reform policies more and more, not only in terms of content or system but also the policy-making process so as to ensure increased involvement of social subjects and best mobilize the initiatives and intelligence of every citizen and organization in the society.

The participation of all citizens and social organizations in the policy-making process is also an opportunity to communicate and disseminate policies and laws, or in other words, it is also a process that encourages mutual understanding and support among stakeholders in order to establish a mechanism, a general legal framework for society. Besides, with the inherent functions of social organizations, and according to the experience of many countries, the participation of social organizations in the policy-making process is obviously an objective and effective monitoring of the stages and participants in the policy-making process, which represents an essential tendency of modern democratic society in any regime.

The public participation in policy-making process in many countries was limited before. It was often just a hearing. The policy makers made proposals and consulted with those people who made policy decisions. After that, the policy makers organized an opinion poll, in which all stakeholders could give their own opinion and points of view. However, in fact, there were almost no arguments in these polls.

Since then, studies on different models of public participation have increased dramatically in number. In Dutch cities, there started talks at city level, local forums, public consulting rounds, political forums, or council meetings outside the city hall, and local councils... In some cities, citizens are even entrusted to propose issues to the Council's agenda. To a larger extent, they even use various means of information collection from citizens such as surveys, forums, people's jurors, community polls, talk rounds, workshop...

In summary, in order to increase public participation, the policy-makers have developed different models in which everybody in the community can participate in their own way, instead of direct dialogues. They use different consulting methods for different groups. The direct participants may be asked to give opinion, while the opinion of the community in general can be taken by conducting surveys in various forms among different groups with different purposes.

The participation in policy-making helps citizens understand public work. The authentic participation may lead citizens to enthusiastically accept social choices that they previously opposed to because now they have chance to listen and vote. Opinion poll can provide with a means to solve political issues that are causing dramatic division. Another characteristic of democratic regime that make it more appropriate than



other social regimes is that it provides good control of power abuse by empowering all voters to reject inappropriate policies.

The search for support from social groups will increase public participation in the policy-making process. Citizens are not only customers who receive products from service distributors but also active participants affecting the policy decisions. It depends on the direct or indirect democracy that citizens influence, participate and conduct the policy-making process.

Public participation must be executed with the stability of the political system. The support from citizens for the political system is one of the most important inputs among other requirements. When this support decreases, it can be clearly seen that social problems increase, citizens's trust in the political system reduces and pressure on the government increases.

Policies tend to become better in terms of quality if there is consensus among policy-makers and targeted groups. The transparency of policies is enhanced, along with increased control and accountability. Therefore, the participation of community is a strong expression of "control and balance". It makes sure that policies are better through arguments and agreements among stakeholders.

Public participation in the policy-making process makes policies become more popular, less "authoritarian" and avoid being one-sided in policy issuance which results from the fact that policies are issued only on the basis of the leaders' interest. The effectiveness and validity of policies, as well as interest and needs of citizens are neglected, thus leading to the ineffectiveness of those policies that aim to change citizens' behaviors. Citizens are more sensitive to policy proposals that they participate in than those that reach them by means of documents.

The attempt to attract public participation does not slow down the policy-making process but it only contributes to promote the performance, efficiency, and feasibility of policies in practice. A policy without a practical basis and public support will become a failure. Therefore, in the process of policy formulation, the public participation plays a very important role. Major policies should be engaged and consulted by the public, which is considered as the pre-condition for their effectiveness. Overlooking public participation and consensus in the first stage will lead to hindrance and delay in following stages of the process.

The public participation in the policy-making process also has a positive influence on their votes for politicians.

The last but not least, public participation may have side effects. When the knowledge and awareness of citizens about social issues are enhanced, it may increase consensus and reduce violent confrontation in the society, contributing to solve social issues more quickly and effectively.

The comprehensive reform during the past 30 years in Vietnam marks outstanding improvements in various fields of socio-economic development, improvement of the state management system, gradual completion of policy and legal system. However, with a view to having a productive and effective policy system, the reform of policy-making process still requires more in-depth studies and harmonization of the management goals of the state and the goals of community and society, to ensure the building of a socialist legitimate state, to mobilize social resources development to the fullest, and to preserve social order for the benefits of development, respect of human and citizen rights.

Resolution No 48-NQ/TW signed on 24/5/2005 by the Ministry of Politics about “The strategy for development of the legal system until

2010 and looking forward to 2020” clearly points out the requirement to: “...ensure the active participation of citizens in all law making process” and one of the most important solutions is to stress the role of research units, encourage the policy to involve “associations, economic organizations, social-vocational organizations, and skillful experts” in every stage of the policy-making process and law-making process, as well as to determine a critical feedback mechanism to receive opinions of the public. The Constitution of 2013 has a relatively specific regulation on the right of citizens to participate in state and social management: Specifically, “Article 28 of the Constitution states that: *“Citizens have the right to participate in the management of the State and society, participate in discussions and make recommendations to State organs about the organizational, local and national issues. The State creates favorable conditions for its citizens to participate in the management of State and society; the State has to prove its publicity and transparency in receiving public opinions and proposals as well as in giving feedbacks.”*

*\* Some requirements for increasing public participation in the policy-making process*

Firstly, the political system and its institutions have to, through the state apparatus, operate in a way that they can receive and deal with information about the needs and demands of the society, in order to select the useful information to effectively serve the policy-making process, toward a general objective of effective management of the state and society, and better performance of the state apparatus itself for the sake of the country and for the sake of its people.

Secondly, regarding public power, the state power has to ensure high level of consensus and reflect the will of society and the citizens from various classes. But it also has to harmonize laws and practice and

social opinions so as to preserve a certain extent of stability and order, in order to meet development demands.

*Specific requirements:*

Firstly, it is emphasized that the law on the participation in public policy-making process and procedure is a part of Vietnam's legal system, therefore it is essential to respect general principles for building laws, in which it makes sure the public and social organizations are engaged in the development and formulation of policies.

Secondly, it has to create favourable (legal and social) conditions for the social organizations to participate in the law and policy-making process, with clearer and more specific regulations for their legal positions and rights, and with convenient procedures.

Thirdly, it has to ensure publicity, transparency and accessibility to information for citizens to participate in and make policy suggestions. This requires state bodies to undertake many renovations in terms of governance, toward meeting the demand for access to information of diverse subjects in the society.

*\* Some methods for democratization in the policy-making process*

*- Develop and issue the law on public opinion poll:*

Opinion poll is the highest level of direct democracy but so far it has not been used in Vietnam. With critical significance and its newness, complicatedness, difficulty in implementation, opinion polls must be conducted on the basis of the highly effective legal document - the law on opinion poll. The law on opinion poll must regulate the following contents comprehensively: the content of the opinion poll; the right to decide when an opinion poll is needed, and whose responsibility is it to conduct the opinion poll; the dissemination and communication on opinion poll; evaluation and use of opinion poll results.

- *Research and build laws on social criticism*

Social criticism is a form of direct democracy of significance to the course of extending and developing democracy. The goal of social criticism is to guarantee harmonization of interests of all members in the society, including the State, political-social organizations, economic organizations and every citizen. In order for social criticism to be implemented as an effective form of direct democracy in social life, it is necessary to do research and issue a law on this kind of activity. This law should regulate clearly and specifically on the mechanism and the flow of procedure to make social criticism, as well as the roles and responsibilities of organizations in that procedure.

**III. The class nature of the State and the policy priorities**

Every state has a certain class nature and based on this nature, they have certain priorities. The State commences, exists, and grows in a close association with a class society. It comes into existence when the human society develops to a certain level in order to meet the needs for such development. Therefore, the state is of both class and social nature. This means it both protects the ruling class's interests in the society and maintains the social order to ensure the stability and promote the social development at the same time.

The State is always of class nature, whether it is slavery, feudal, or capitalist. To conduct and demonstrate its class nature and protect interests of the ruling party which it represents for, the State establishes a special public power. It is an organization of public power that each and every individual and entity within the territories of a country must obey. The State power is exercised by state agencies and entities nationally and locally. They are mainly responsible for managing and providing public services.

The State organizes and manages the population by regions where they live, also known as administrative units/territories, without relying

on their occupation, age, or gender etc. The State management by administrative units/territories is intended to make sure that members can exercise their rights and perform their duties at the places where they live.

State is also the official representative of the whole society in exercising national sovereignty. The state's exercise of national sovereignty is reflected by the fact that it has the highest decision-making power in all of its internal matters without any intervention from any other country, and it is autonomous in the relationships with other states.

State has the power to issue law, i.e. system of rules of conduct applicable to everyone in the society. To make sure that those rules are implemented, the state takes many measures such as propagandizing, educating, persuading its people to respect and comply with law, etc. In some cases, the state can even take certain coercive measures such as imposing disciplinary actions on violating individuals.

According to the Constitution of the Socialist Republic of Viet Nam, *The state of Socialist Republic of Vietnam is a socialist rule of law State of the People, by the People and for the People. All state powers belong to the people whose foundation is the alliance between the working class, the peasantry and the intelligentsia.* This clearly defines the nature of our state as shown below:

Firstly, our state is the State of the People, by the People and for the People. In the state of the Socialist Republic of Viet Nam, all state powers belong to the people. The people are the masters and have the rights to engage in and make decisions on important matters of the country. State agencies are directly or indirectly founded by the people and under their inspection or supervision. The state is organized in such a manner to reflect the will and desire of the people, to protect their interests, to repress opposing forces from violating social order, security, and safety and going against the interests of the majority of the people.

Our state is a truly and widely democratic state. The democracy of our country is comprehensively reflected in different aspects of social life. The state adopts the policy on a socialist-oriented multi-sectorial commodity market economy that ensures the freedom and equality of business entities and the equality of economic sectors before the law. In political sector, the state makes sure that every people can exercise all of their democratic rights of freedom based on principles of law. Besides, the state also offers all kinds of conditions for the people to exercise other rights of freedom, such as freedom of speech, freedom of the press, freedom of religious belief, etc. Also, using statutory provisions, the state can protect other rights of freedom entitled to an individual, such as the right to have health and life protected, the right of inviolability of correspondence and housing, etc.

Our state is the united state of ethnic groups. The people and class nature of the state of the Socialist Republic of Viet Nam is closely associated with its ethnicity. In all stages of its development, our state always recognizes and exercises the principles of national unity. This is indicated by the Party's and State's policy on ethnic solidarity, in which it facilitates conditions for each ethnic group to engage in the establishment and consolidation of state powers as well as participate in the organization of the state system. Besides, the state offers many preferential policies to minority groups and those living in rural and remote regions, enabling them to mutually support each other and make sure that they can take advantages of their nice and traditional cultural and spiritual values. In current context, the state also takes many measures to develop the economy in mountainous areas in order to reduce the gap between mountainous and plain regions.

The state of the Socialist Republic of Viet Nam has wide sociality. Based on the foundation as the alliance between the working class, the

peasantry and the intelligentsia, with the goals to develop a fair, democratic, and civilized society, our State has taken many activities to organize and manage principal aspects of social life such as economy, politics, culture and society, in order to build up a developed economy and a modern and civilized culture imbued with national identity. The state also takes many measures to develop science & technology and education to support socio-economic development. On the other hand, it conducts many activities to develop health sector and care for the people's health. Under today's circumstances, by developing a socialist-oriented market economy, our State has adopted policies to ensure social equality as well as applied other social policies to reduce the gap between the rich and the poor.

The state of the Socialist Republic of Viet Nam is following the foreign policy of peace, cooperation and friendship. We are exercising the policy of peace and friendship, expansive relation and cooperation with other countries in the world, notwithstanding the differences in political and social systems, on the basis of respecting the independence, sovereignty and territorial integrity of each other and non-interference with others' internal affairs, equality and mutual benefits, consolidation of the friendship and cooperation with socialist-oriented states and neighboring countries, positive support and contribution to the movement for peace, national independence, democracy and progressive society in the world.

The above-mentioned characteristics which reflect the nature of our state are specifically manifested by the state policies and activities. That nature is always reflected in policy preferences. The policies intended to promote people's sovereignty and develop a democratic, prosperous and equal society are always prioritized in policy formulation. Many policies such as those on hunger eradication and poverty reduction, preferential



treatment on families in rural and remote regions with difficulties, development of minority groups, etc. have been prioritized to be developed and adopted in order to offer equal development opportunities among social groups, especially for the ones at disadvantages. This is a basic characteristic of a socialist state. Every individual in the society has equal right to develop, and the state offers conditions to promote social security and ensure social stability and development.

#### **IV. The requirement of fairness, equality and the issue of group interest in policy-making**

Social fairness reflects the handling of the interrelation among individuals in their social relationships regarding rights and obligations, benefits and responsibilities, devotion and enjoyment, and common and private interests.

Realizing the goal of fairness means to build a society in which every citizen gets equal and similar benefits if they have similar obligations and responsibilities as stipulated by the law.

One of the most important roles of public policies is to provide guidance for the activities of socio-economic entities. The goal of policy implies the state's attitude towards a public issue, so it clearly expresses the state's tendency to pose influence on social entities so that they operate according to the future values that the state is pursuing. The general development goal that Vietnam's party and citizens try to reach is: "wealthy people, strong country, and fair, democratic and civilized society", so the policy goals should be in accordance with the general goal of the country, in which fairness one important criteria that helps the state determine specific policy goals. The goal of fairness also expresses the will and wish of people in handling public issues.

In order to achieve fairness in policy goal, it is essential that the policy covers all those who are influenced by the policy, and equal benefits among them should be guaranteed; more benefits to those who need more urgently; thus the distribution of resources to beneficiaries depends on the urgency of their needs, not on their ability.

Originating from the fairness aspect of the distribution of products, fairness in the goal of policy means firstly to make sure that everybody benefits from the policy, that all citizens can easily access basic utilities regardless of their localities or regions.

Regarding particular interest, fairness the policy goal means that “those who have more urgent needs get more attention and those who are disadvantaged (economically and socially) must be cared for more. Justice in policy goal can be interpreted that everybody, whether rich or poor and despite the different classes they belong to, receive similar benefits according to the urgency of their needs; people who are poorer, living in more difficult areas get more support and supplies from the State.

Depending on each particular policy, fairness is considered on the basic of the specific characteristics of those who are influenced by the policy, such as age, sex, regional traits or levels of volatility...Based on the policy goal, policy-makers develop suitable policies that ensure fairness and equality.

**\* The requirement of ensuring fairness in the policy process**

*Ensuring fairness in the policy-making process*

Based on the determined goals of the policy, the policy-making process once again confirms and institutionalizes the goals of the policy. There are four steps in the policy making process:

- Determine the policy issue: the policy-makers look for and identify a pressing issue that is important to the country's development in general or to a specific area.

- Identify the goals: identify the goals to reach in the handling process the issues.

- Set out solutions to reach the goals: look for effective and feasible solutions to reach the goals that have been set.

- Select and approve the policy: authoritative bodies consider and compare the policy alternatives, then select the most appropriate policy to issue and put into implementation in real life.

Government should understand that the influences of a policy on its beneficiaries are an important part of the adherence to the principle of fairness.

In selecting policy alternatives, it is necessary to consider whether a policy can cover all groups or not, for example, whether a particular policy meet the needs of different beneficiary groups? Can it address the problems that this subject is facing? This consideration will help policy-makers identify negative or illegal issues as well as opportunities to integrate into the policy. Ensuring fairness is aimed at removing and minimizing the disadvantages of volatile groups, encouraging them to integrate into community. This is done step by step in order to meet different needs of different beneficiary groups.

Ensuring the principle of fairness also implies reasonable calculation and allocation of resources so that all beneficiary groups receive the benefits that are corresponding to their ability and needs, while ensuring its effectiveness widespread across the society. The allocation of policy-related benefits needs to be done in accordance with specific principles in order to make sure that targeted beneficiaries

instead of the other participants in the policy-implementation process receive supports from the state; or to make sure that they receive all of the allowed benefits without being taken a rake-off on as a result of the wrongdoings of other participants in the policy-implementation process.

Besides, ensuring of fairness also means to make sure that all citizens have similar opportunity to participate and contribute their ideas when the state organizes an opinion poll, such as doing research, sending proposals for feedback, attending workshops held by the lead organization to raise opinions... At the same time, the authorities should offer favorable conditions to fully mobilize the citizen's participation.

Reality has shown that, social policies primarily affect the citizens, who are direct beneficiaries of policy-created values, so the full mobilization of citizens' participation not only ensures fairness but also the effectiveness of policies. With increased participation of the citizens in the policy-making process, the policy's coverage becomes more comprehensive, citizens' wishes are more clearly understood, and policy solutions to meet those wishes are more specific, objective and appropriate.

#### *Ensuring fairness in policy implementation*

It can be said that, policy implementation is the most important stage of the policy-making process. This is a stage that the state's mandates go into effects, policy actions have direct impacts on the beneficiaries, and thus the requirement of fairness is raised more seriously and thoroughly. By policy solutions, the State implements specific activities on the beneficiaries. Not like the previous stages, there are many things to be completed, which relate to various subjects and various fields such as resources or finance... so it is quite complicated. This is also a stage in which when the beneficiaries are directly affected,

so ensuring of fairness is a factor to be constantly noted in order to avoid inequality in the process of policy implementation.

Fairness lies in the fact that, by means of policies, the state re-allocates incomes among classes, at the same time gives aids for the volatile, such as the poor, the elderly, children and the disadvantaged in order to overcome the income inequality among social groups. The fairness of policies also lies in the reasonable allocation of costs and benefits, rights and obligations of the participants in the policy-making and implementation process and among those related to the policy.

In any country in the world, resources supplied by policies do not usually meet the needs of everybody, because needs are increasing whereas resources are limited. Therefore, allocation of resources should not base on the principle of equilibrium, but must ensure fairness and equality. Each country must have appropriate policies to exploit and allocate resources and services in accordance with the goal of fairness and effectiveness. In this regard, the poor and disadvantaged in the society are cared for at the fundamental and essential level.

Besides, the government also has to execute its important responsibility in providing rules to make sure that the quality and benefits of policies are allocated equally throughout the country so that its citizens regardless of their locality can get access to the whole system of benefits that the policy provides.

In order to assure the principle of fairness in policy implementation, human factor plays a crucial role. Officers and civil servants who directly participate in policy implementation should be unbiased and keep their integrity, prevent incidents in which the full benefits provided by policy are cut down or reduced by local authorities. In order to make this

possible, there should be a mechanism to closely monitor the implementation of public policies.

*Ensuring fairness in the policy-evaluation stage*

After a public policy is issued and goes into effects for a certain period, normally, the State will have to evaluate its performance and impacts on the society. Meanwhile, different individuals and social organizations also take part in the evaluation of performance and impacts of that policy to show whether they support or protest, or propose change to it. Thorough and comprehensive evaluation of a public policy depends on its original goals and on-going solutions to reach those goals. As to citizens, they evaluate a policy mostly in terms of effectiveness, contents and solutions, not legal aspect.

Like when they participate in the policy-making process, the participation of citizens in the policy-evaluation process should be encouraged in order to ensure the principle of democracy and objectivity of the policy implementation process. Also, it is a demonstration of citizens' participation in the management of the state and society. In order to ensure fairness in the policy evaluation, it is necessary that citizens have opportunities to participate directly or indirectly and in various forms to communicate their opinions and point of views to the policy-makers. For the effectiveness of the evaluation, state authorities must have mechanism to welcome public's opinions in an effective and respectful way, show that measures are taken to adjust policies. Only by doing so can they make useful use of public evaluation, encouraging citizens to participate in policy and law making process by the state.

## CHAPTER IV: STATE POWER IN POLICY IMPLEMENTATION

### I. The role of Government in execution of policy implementation

In any state, executive power is considered direct power in making, proposing and implementing policies. Compared to legislative and judiciary, executive power has the following fundamental characteristic: “to act to bring laws into life”. If the National Assembly has function in issuing laws, judiciary bodies arbitrate and judge illegal behaviors, the “action” of government is to propose policies and laws to the National Assembly for approval, and then the government in turns, within its tasks and rights, implement those policies and laws, prosecute the criminals and bring illegal behaviors to court for judgment. Therefore, the Government is always the main subject that makes sure the normal effective performance of power branches within the state power structure.

So, the executive in its broader meaning is not limited in the adherence to laws, but also means providing guidelines for policies and implementing policies. If we assume that the adherence to laws refers to both those subjects that the laws are applicable to (the society) and the implementation and execution of laws, it will be the task of government and the administrative systems, justice authorities, and courts of investigation (which monitor the adherence and execution of laws). In the case of Vietnam, it can be seen that the whole political system is obliged to abide by the laws.

The executive branch cannot be limited to administrative frame because administrative branch is just a part of executive one. While the executive branch is responsible for making and proposing policies (macro level), the administrative branch is responsible for that policy (micro level). On the other hand, it is through administration that laws are brought into management. However, the execution of laws here only limit in legal events that protects the rights and benefits of management subjects, such as disputes on management authority among ministries, or providing measures to protect the legal rights and benefits of citizens;

even complaints and accusations that citizens submit to state authorities, asking them to address to... reflect the execution of laws in social life.

Regarding the whole political system in Vietnam at present, it can be seen that the executive function is present in the following areas: making macro policies guidelines for the socio-economic development of the country, issuing policies and laws within its authority or in cases which it is empowered with legislative power, organizing the realization of laws in society, monitoring and investigating the implementation of laws; applying laws in necessary situations.

The above areas are described clearly in the contents of Vietnam's Constitutions of 1959, 1989 and 1992. Especially, in Constitutions of 1992 (which was adjusted and amended in 2001 and in 2013), the executive power is elaborated: The Government manages the implementation of political, economic, cultural, social, national defense, security and diplomatic tasks of the State; it guarantees the effectiveness of the State apparatus from Central to locals, ensuring the adherence to and respect of the Constitution; encouraging the sovereignty of the people in the cause of building and protecting Fatherland, ensuring the stability and enhancement of physical and cultural life of the people

It can be said that, the basic roles of executive bodies are:

- Communicate and disseminate policies
- Propose measures, procedures, process and criteria.
- Develop strategies, programs, plans and projects.
- Mobilize resources, connect forces, assign responsibilities, and appoint organizations and individuals for different roles in the policy implementation process.
- Supervise, inspect, audit preliminary conclusions and conclusions to draw out experience, competitions, awards, punishments, the handling of complaints and accusations.
- Provide public services, organize administrative activities



## **II. The role of the Legislative body in supervising policy implementation**

Supervising the implementation of policies is one of important tasks of the legislature. Supervision has become the main function of the National Assembly and plays an increasingly important role, though it forms after the legislative function. The purpose of supervision is to monitor, as the people's representative, the effectiveness, integrity and transparency of decisions made by legislature as well as all of the public policies. Legislature conducts supervising activities because it is obliged to make sure that executive body shall implement the policies and manage them effectively and reliably.

Legislature has the role to select policies and supervise the implementation thereof to make sure they satisfy the people's interests and meet predefined goals. As such, its supervising function helps it maintain the democracy and keep the people's sovereignty respected. That is why the international community is emphasizing that the supervision by National Assembly is a fundamental condition for good administration in developing countries.

In performing its legislative role, the National Assembly must be aware of the outcomes of legislative acts and policies so that it can revise its operations in the future. Legislation is the external appearance of policies. Supervising the policies adopted by the legislature is also helpful to further improve the legal system in the future and eliminate inappropriate policies by introducing new acts and policies to ensure the appropriateness.

Though the legislative initiative is shared by the National Assembly and the Government since the Government is the maker of propositions; in fact, however, executive branch usually plays a more dominating role in defending propositions. Therefore, the National Assembly's function to

supervise the implementation of policies is of paramount importance so that necessary modifications to policies may be made.

The history of establishing the Parliament of England's supervising function has proved that the agency in charge of regular administration should be the Government rather than the National Assembly. Then, it would be reasonable that the National Assembly's duty is monitoring the Government, including supervising the policy implementation.

In Germany, supervising function is only carried out over the activities of executive agencies, not those of judicial ones. In France, supervision is limited to “the effectiveness, integrity and transparency of decisions made by legislature as well as all of the public policies.” In South Korea, legislative supervision on executive agencies is carried out in three sectors: legislative, financial, and national administrative. In legislative activities, the executive branch has the right to submit propositions, so the National Assembly must supervise its legislative activities; it also has the right to issue legal documents and authorizes to issue specific decisions and orders to implement the law; the President signs international agreements with foreign parties, declares war conditions, and issues decisions and orders on emergencies.

Regarding supervising tools, national assemblies of countries in the world are applying a variety of them. Forms of supervision are much dependent on the state polity itself. In the parliamentary regime, National Assembly can exercise this function by using different methods, such as reporting at a plenary session, questioning, setting up inspection teams, holding a vote of non-confidence, replacing members of the Government, etc. In a state organized in form of Republican Presidential Institution, the National Assembly has the right to allege as guilty and charge senior officials of the state, even including the top-level President, while committees of the National Assembly (U.S.) have the right to request the

secretaries for a hearing at their meeting sessions, etc.; there are procedures for charging senior officials, which are initiated with a charge by the lower house and ended with the impeachment and conviction by the upper house; the applicable sanction is dismissal from the duty.

According to the experience of Germany, supervising tools should be categorized to suit subject matters to be supervised. If it is policy supervision over the whole Government in the implementation thereof, the adopted tools should be electing and dissolving the Parliament and holding a vote of confidence/non-confidence/constructive non-confidence. In South Korea, the specific tools adopted for the supervision are reviewing propositions submitted by the Government; auditing state budget and clearing financial resources; questioning and controlling administrative officers.

So, it can be said that supervising activities of the legislature with respect to the implementation of policies are manifested in the following fundamental manners:

- Request reports and analysis by the executive body.
- Interrogation
- In-place evaluation
- + Request the executive body to adjust and make amendments.
- + Make decision to terminate and temporarily terminate the implementation of a policy.

It can be said that, the legislative body's supervision on the policy implementation plays an important role in the general operation of the state. During the past time, the supervision has brought about practical results, widespread influence, boosting the socio-economic development of the whole country and of every local areas. However, reality shows that the supervision of National Assembly still has certain gaps, resulting in the effectiveness of the supervision has not been up to requirement and

demands of reality and not fully shows the role of National Assembly as the highest state power body. The supervisory activity of National Assembly is still unfocused and lack of centralization. It only bases on documents provided by related authorities without making advantage of support from independent channels of information such as auditors, inspectors, examiners and the participation of experts. The supervisory activities of several critical issues related to management, handling of complaints and accusations from citizens are not attached adequate significance to, resulting in low effectiveness of supervision. Some supervision activities have been stipulated in the Constitutions, the Law on Supervision of National Assembly, but have not been implemented so far, for example: review the reports by National Assembly Standing Committee on the execution of Constitution, laws, National Assembly's resolutions; establish an Interim Committee of the National Assembly in order to investigate certain issues or to hold a vote of confidence for a person that is chosen or approved by National Assembly to hold a certain position. These clearly are the issues to be solved in the coming time.

### **III. The role of the judiciary body in violations in the policy implementation**

This is a very important role in a legitimate state. The judiciary body is an important branch of power - judiciary power. Only when the performance of judiciary body is enhanced can the policies be implemented correctly and thoroughly. The judiciary body is considered an important institution to execute the state power.

The theories and practice in civilized, advanced and developed countries indicate that independent judicial power is the most expressive manifest of a legitimate state and a democratic, equal and fair judicial system that effectively protects human rights and civil rights. Justice is the symbol of the right intended to settle disputes in the society at various

levels, from civil disputes to political ones. Especially, justice plays an important role in handling violations of policy implementation and makes sure that policies are appropriately and strictly taken.

“Justice” (or “Justitia” or “Justition” in ancient latin) also means “equity”, “equality”, “legislation”. Under a narrow perspective, it comprises of *all courts and activities to enforce these agencies' jurisdiction.*

*In the most general sense, justice is a court's activity to represent the equity to settle social disputes in accordance with law and rules of equity and is regarded as the Court's jurisdiction.* Accordingly, justice in a legitimate state requires the Court (as the judging body) to make sound and equal judgments to, on one hand, protect the most valuable social values from being ruined by violations of laws (and crimes) that are against the interests of society, country and people, and, on the other hand, to impose strict and lawful actions on such violations, and thereby realizing requirements of the legitimate state in the society, as well as protecting human rights and integrity of laws and policies, because laws are the external appearance of policies, and policies are the content of laws.

Legitimate state is a state in which law holds the position of paramount importance in all activities of social life and has the role to promote and enable the courts to exercise their jurisdiction (legislative, criminal, civil, economic, labor, or administrative) to settle disputes in accordance with provisions of law and rules of equity, as well as to meet people's and society's expectations. The paramount position of law exists only if it is strictly followed and complied with, and it also contributes to the proper implementation of policies. Without a system of judicial agencies, it will be difficult to strictly apply a policy in practice.

The independence of a court in general and that of a judge and jury panel in exercising their jurisdiction in particular on the basis of law is the basic tool to guarantee the paramount position of law.

Since the 6<sup>th</sup> National Congress (1986), our Party has set it a guideline to comprehensively renovate our country and taken measures to do so. Judicial reformation is an objective and urgent request by the rule to be able to adapt to new cultural, economic, social and political circumstances. Therefore, this problem was officially discussed in the subsequent Congresses of the Party, and recognized and acknowledged in Resolution 8 of the 7th Central Committee, Resolution 3 and Resolution 7 of the 8th Central Committee, and especially Resolution No. 08-NQ/TW dated January 02, 2002 “*on some focus on judicial duties in the coming time*” and Resolution No. 49-NQ/TW dated June 2, 2005 of the Politburo “*on the Strategy on Judicial Reform through 2020*”.

It can be said that in judicial activities, one of the indispensable requirements is *the objectivity, equity, fairness, and strict compliance with law*. Over time, judicial activities have seen many positive changes, serving as an effective tool to resolve social disputes, protect social regime and people's sovereignty, maintain the equality among ethnic groups, interests of the State, legitimate rights and interests of the people and organizations, protect the legal order, rights, freedom and safety of organizations and individuals, etc.

Beside such achievements, however, judicial reformation is slower than practically demanded, lacks the focus on development of judicial staff and facilities. Criminal policies and civil law rules have changed considerably; however, they still contain many limitations and fail to adapt to the innovation of the society. Activities by judicial agency and supporting units have not yet met the demands for innovation, adapted to and served the socio-economic development. In addition, there

are still crimes left untried, *injustices in the investigation, injustices in the prosecution and trial*, complaints and denunciations against public officials violating the law; the civil judgment enforcement has not improved much. Part of the judicial staff remains incapable and unqualified, and even commits unethical conduct.

To further enhance the role of the courts in particular and the judiciary in general in ensuring law and policy enforcement, our Party has put an emphasis on the following tasks: “*Reform the organization; enhance quality and performance of judicial agencies; raise the awareness of responsibility among judicial agencies and officers in the investigation, imprisonment, detainment, prosecution, settlement and enforcement of judgment; as well as try not to leave any inappropriately settled cases*”<sup>1</sup>.

*The strategy on judicial reformation through 2020* states that: *The goals of judicial reformation* are developing a transparent, strong, democratic, and disciplined judicial system that protects justice, gradually modernizes and serves the people and state of the Socialist Republic of Vietnam; effectively and efficiently conducting judicial activities with a core focus on court operations. Therefore, specific contents carried out for purpose of judicial reformation, which are also intended to make sure the transparent implementation of policies, include:

*Firstly*, judicial reformation should be carried out as part of the whole state apparatus reformation and in its close and synchronous relationship with administrative reformation. That reform cannot be separated from the renovation of the political system and the development of a legitimate state of the Socialist Republic of Vietnam that is of the people, by the people and for the people.

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<sup>1</sup> Source: *Vietnam Communist Party*, working materials of the 9<sup>th</sup> National Congress, National Political Publishing House, Hanoi, 2001, pg. 133

*Secondly*, judicial reformation must target at the full implementation of fundamental principles of judicial organization and activities, such as: each agency implementing each stage of the legal proceedings shall be solely responsible for its conclusions; it must ensure the objectivity of two-level trial process; the judges and jurors are independent of each other and only follow the law during the trial; everyone is equal before the law; the right to counsel of the accused and defendant is secured; the public are involved in inspecting and supervising judicial activities so that no crime is left untried and no injustice is done to the innocent, etc.

*Thirdly*, it is necessary to properly and seriously exercise the duties of judicial reformation, which are finalizing the policies, criminal laws, civil laws and judicial procedures; clearly determining the functions, tasks and authorities of judicial agencies, and improving their organization and apparatus. The focus is on developing and perfecting the organization and operation of people's courts; improving judicial support institutions; building a spotless and strong judicial and judicial support staff; enhancing the monitoring mechanism of public-elected agencies; promoting people's sovereignty on judiciary; strengthening international cooperation on judicial matters; maintaining facilities for judicial activities; and improving the mechanism of Party leadership on judicial affairs.



## CHAPTER V: THE ROLE OF POLITICS IN POLICY- MAKING IN VIETNAM

### I. The political system and the authority on polices

Regarding structure, the political system includes interrelated bodies, which have typical positions, functions and mechanisms to execute their power. There are apparently three groups of relatively independent power: the state power which is the Socialist Republic of Vietnam in the united power structure; political power hold by Vietnam's Communist Party, which is the main subject to organize and direct the state in the orientation of socialism; finally social organizations and unions which are established and operate in the current legal environment, surrounding its representative body which is the Vietnam's Fatherland Front. Therefore the Fatherland Front is not only the representative of social organizations, but also the representative voice of community and citizens. These parts are connected to one another in particular relationships, mechanisms and operating principles, in a particular cultural, political environment.

#### *1. The characteristics of Vietnam's political system*

*Firstly, the political system is leaded by the Communist Party of Vietnam*

This characteristic is typical of the political system in socialist countries, but in Vietnam, it also has particular aspect. This particular aspect is determined by the role, the position, the ability and credit of the Communist Party leadership from its establishment until now, elaborated during the cause of saving the country, liberating the nation, resisting colonialism, uniting the country, building and defending fatherland, renovating society...

*Secondly, Vietnam's political system is influenced by the Soviet model.*

Although it is in a renovation process, but the influence of the centralized bureaucratic collectivist regime proves relatively strong in the way of thinking and doing of political subjects and in the organization and execution of state power as well.

*Thirdly*, the socio-political organizations that are established and led by the Communist Party closely adhere to the Party and State, being their political basis.

*Fourthly*, the State administration, a very important part of the state, is very young (only over 60 years old), seriously affected by the highly centralized bureaucratic and subsidized system but has to do a series of new and significant historical tasks: bring Vietnam from an outdated agricultural and small production-intensive country going on to socialism, skipping capitalism, successfully conducts the cause of industrialization together with modernization, building a socially-oriented market economy, a socialist legitimate state of the people, by the people and for the people... All those tasks are aimed at building Vietnam as a country in which the people are wealthy, the country is powerful, democratic, just and civilized; integrating and shortening the development gap with other countries in the region and in the world.

These characteristics decides the structure, the organization, the operation and the relationships in the political system as well as the difficulties and challenges that Vietnam has to face... at the same time set out new requirement of renovating and perfecting its political system.

## *2. Policy authority*

- The Party's bodies such as the Party's National representative Assembly; Central executive committee; the Politburo; the Secretary Committee; other committees of the Party... all have a role and a voice in the policy making process. Especially, Party's National Assembly is considered at the highest position. In the Assembly, the representatives are allowed to raise their voice in the making of major policies, which

may create a major improvement in the social, political aspects of the country.

- State bodies such as National Assembly; the Government, People's supreme court, People's supreme investigation... also have their own voice in the policy-making process.

- Socio-political associations. In today's civil society, social associations have a very important role and voice. Social-politic organizations are those that ensure the unity of both political and social aspects. This reflects the solidarity of public resources to carry out political tasks of the Party and State. Their forms of organization and operations are different from those of the Party and state agencies, but are closely associated with the performance of targets and tasks entrusted by the Party and State. Social-politic organizations are those that encourage and deploy personnel resources for building and defending the country of Vietnam in the movement jointly led by the Party and State. Together with the Party and State, social-politic organizations are forming the political system of Vietnam, in which the Party holds the position of direct leader. In the socio-political system of Vietnam with a widely social and political nature, social-politic organizations are playing the role of the organizer and promoter for the majority of people to carry out the duties imposed on Vietnam's revolution in appropriate manners.

Each socio-political organization has its own role. Vietnam National Front is a political union - voluntary association of people's organizations and typical members of each class, social strata, ethnic group, and religion; it is the organization that represents the will of great solidarity and the right aspiration of the people, where the minds of Vietnamese patriots are gathered, the activities of member groups are united, in coordination with the government to develop a democratic system, care and protect legitimate rights and interests of people classes,

monitor, protect and construct the state as well as administrate the society. The Front has the role to supervise, unite people, care for its members' lives and interests, implement the democratization and renovation of the society, exercise civil rights and obligations, and tighten the relationship between the Party and State and its people. Especially, the Front has the function to give feedback on social opponency against propositions that are actually policy drafts. This function is very significant as it helps develop an effective and appropriate policy.

Vietnam General Confederation of Labour is a widely recognized socio-political organization founded by the working class, intelligentsia, and voluntary workers with purpose to gather and unite forces, build up the working class in Vietnam that is strong in all aspects, represents and protects legitimate rights and interests of the workers, and endeavors to develop Vietnam to stay independent and united and keep up on the path toward the socialism.

Vietnam General Confederation of Labour represents and protects legitimate rights and interests of the workers and civil servants; is involved in inspecting and supervising activities of state agencies and economic organizations; educates and encourages workers and civil servants to exercise their sovereignty and civil obligations, as well as build up and defend the nation.

Ho Chi Minh Communist Youth Union is a socio-political organization of the youth with members as elite youth and reserve of the Party. Subsidiaries of the Youth Union are established on national scale and exist in most agencies, units, and organizations from central to local level. It has the role to engage young generation in healthy activities and thereby educate their awareness of respecting the law.

Vietnamese Women's Association is a socio-political organization of the women that represents equal rights, democracy and legitimate

rights and interests of the women in the stabilization and development of the society. The association unites, motivates, organizes, and guides women to implement the policies and guidelines of the Party and the law of the State, contributing to the development and protection of the Socialist Republic of Vietnam.

Vietnam Farmer's' Association is a socio-political organization of the peasantry that is led by Vietnam Communist Party and is a member of Vietnam National Front - a political foundation of the Socialist Republic of Vietnam. The association encourages and educates farmers to promote their sovereignty, positively learn to improve their qualifications and capabilities in all aspects; represents the peasantry in developing the Party and State; cares for and protects the rights and benefits of the Vietnamese farmers.

Vietnam Veterans' Association is a socio-political organization, a member of Vietnam National Front, a political foundation of the people's government, an organization of the political system led by Vietnam Communist Party that functions under the guidelines, guidance, and policies of the Party, Constitution, state laws and its Charter. The purpose of the Association is gathering, uniting, organizing, and encouraging veterans to preserve and promote the essence and tradition of "Uncle Ho's Soldiers"; positively engaging in the development and defense of the country; protecting achievements of the revolution; constructing and protecting the Party, government, and regime; protecting legitimate rights and lawful interests of the veterans; caring and supporting each other in spiritual and material aspects; and promoting friendship in combat.

In addition to aforementioned organizations, there are many other socio-political organizations such as Vietnam Union of Scientific and Technological Associations (VUSTA), etc. This is very important and also a development trend of social institutions in the renovation era,

especially in promoting the industrialization and modernization of the country. Certain professional associations and groups of intellectuals and scientists are not only social organizations, but also play a crucial role in the implementation of the political mission of the country. That can be considered as an indispensable trend in the development and consolidation of the democracy in the S.R. of Vietnam.

So, it is clear that in the socio-political system of Vietnam, socio-political organizations are playing a central role in uniting and gathering people's forces (social in nature), representing and protecting legitimate rights and interests of the members, and exercising their role as political foundation for people's government in motivating the people to successfully complete political tasks of the Party and State. Compared to other social organizations, this role of socio-political organizations is more direct in the service of the revolutionary cause following the guidelines of the Party and the policies and law of the State.

Besides traditional political and socio-political organizations as well as social organizations that have been transforming into socio-political ones, there are additionally hundreds of social organizations in Vietnam. They are increasing in number and organized in a variety of forms, such as economic associations, professional associations, collective groups by preference and will, and non-profit mutual-assistance organizations, etc. They share common characteristics of being non-politic and non-profit. This means that they are conducting activities on voluntary, democratic, and equal basis and protecting and developing common interests of their members.

In addition to great number and diversity as major characteristics of social organizations, they share another common attribute: the increasing connection and collection of forces based on the similarity of interests and purposes. This is also an objective trend in a civil society that we

should understand to take advantages of the positiveness and mitigate the negativeness.

Today, the role of social organizations is better and better defined in the development of a market economy, legitimate state of socialism, and a civil society. Under the existing conditions, it should be noted that professional and economic associations are playing an increasingly important role. According to the principle of relationship between economy and politics, economic organizations will have a great influence on political life and law of our country in both positive and negative ways. This is also an objective trend in the development of the current democratic system. Although this is not decisive to the political and legal institution, the enactment and enforcement of policies and laws cannot fail to consider the needs, interests, advisory role and social opponency and supervision function, or active engagement of social and professional organizations in the process.

As such, in today's socio-political system, social organizations are playing a more dynamic role than in the previous subsidized and centrally planned economy. Social organizations are not independent of political system, but are participating more actively in and having greater influence on performance of political system. In formulating and implementing public policies, socio-political organizations have an increasingly important voice and are contributors to the formulation, implementation and assessment of policies.

## **II. Assessment of policy system in Vietnam**

### *1. Strong points*

- Basically systematic, comprehensive and consistent in its goals of humanity advancement. Obviously shows the nature of a state of the people, by the people and for the people.

- The process of policy-making is increasingly democratic and professional.

### 2. Weak points

- There is a tendency to lack long-term views and consistency, likely changeable.
- The implementation of policies tends to have discrepancy and poor compliance and lack of transparency from both sides (the state and the people.)

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**NAPA - JICA**

***PUBLIC POLICY PROCESS MANAGEMENT***  
***WITH A FOCUS ON CASE STUDIES***

***Hanoi, July 2015***

## 1. Information on lecturers

1.1. Full name of lecturer in charge of the course: Nguyen Thi Hong Hai

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## 2. General information on the course

- Name of course: **Public Policy Process Management with a focus on case studies**

- English name: **Public Policy Process Management with a focus on case studies**
- Course code: Number of credits (in class/practicing/self-study): 3
- Applicable to academic major/discipline: Public policy
- Academic level: Master Form of training: Regular
- Course requirement: (*Compulsory or elective*)
- Prerequisite courses: Public policy making, public policy evaluation
- Pre-courses: Public policy making, public policy evaluation
- Corequisites:
- Other requirements for the course (*if any*):
- Allocation of credit hours to:
  - + Theoretical lecture: 0.6 credit (9 class hours)
  - + Doing exercises in class, discussing, practicing: 1 credit (45 class hours), in which
    - Doing exercises and discussing in class: 0.4 credit (18 class hours)
    - Practicing in group: 0.6 credit (27 class hours)
    - Self-study and doing individual exercises: 0.4 credit (16 class hours)
- Applying for training sector/major: Public policy
  - Training grade: Master
  - Form of training: full-time/part-time
- Requirements of the course:
- Prerequisite courses:

- Previous courses: Policy formulation, policy analysis, policy assessment
- Parallel courses (if any):
- Other requirements of the course (combining theoretical study with actual case studies): The course is mainly dedicated to case study and analysis regarding public policies through actual case exercises. Students are required to attend all classes.

### **3. Objectives of the course**

#### ***3.1. General academic objectives of the course***

- *Knowledge*: + Reviewing/systemizing knowledge of all stages of the public policy process that students have studied in other courses, from agenda setting to policy formulation and decision making, policy implementation to policy evaluation. Students can by then have comprehensive and sufficient understanding of the public policy process.
  - + Helping students understand the diversified practices of the policy process
- *Skills*: Using specific case studies to help students achieve the skills of identifying, analyzing and solving policy problems. Besides, students can also practice the team-working skills through team exercises.
- *Attitude*: Being aware of the importance of the study and examination of the public policy stages in a uniform policy cycle, at the same time being aware of the role and meaning of all the stages in the policy process, thus adopting a positive attitude in forming and implementing public policies.

#### ***3.2. Specific academic objectives of the course***

- To gain, in a systematic manner, the knowledge of all stages of the public policy process: Agenda setting; policy formulation; policy decision making; policy implementation and policy evaluation.
- To understand the basic requirements of each stage of the policy process. This is the key foundation for good policy process management.
- Through the specific case studies, students will be able to (i) understand the practical stages of the policy process in different agencies and sectors; (ii) conduct case analysis, identify the problems and solve the problems related to all stages of the policy process.

#### 4. Course content summary

The public policy process is divided into various stages, from agenda setting to policy formulation, policy decision making, policy implementation and policy evaluation. Each stage is characterized by different features and requirements.

The course of *Public Policy Process Management with a focus on case studies* in the Master of Public Policy program aims to provide students with an overview of the public policy process through all stages, for students to be able to approach the public policy in a systematic manner; at the same time provide students with practical knowledge of the stages in the public policy process; the ability to identify, analyze and solve the problems related to different stages of the policy process. The course is divided into 3 main sections:

- Section 1: ***Overview of the public policy process.*** This section will systemize the stages in the public policy process, providing students with an overview of all stages of the policy process; at the same time summarizing the knowledge gained from other courses. This will help students understand necessary theories for case studies in later sections.

- Section 2: ***Policy process analysis framework***. The section provides students with an analysis framework for them to utilize in the analysis of specific case studies in section 3. The analysis framework is developed along all stages of the policy process. It can be considered theoretical standards/desires that stages of the policy process need achieve. The analysis framework will help students analyze the specific policy case studies and compare them with theories in order to discover the limitations and problems to be added to the policy process to improve such policies.
- Section 3: ***Policy case studies***. The section covers not only policy case studies in Vietnam but also case studies in Japan. By summarizing the theories on policy process in section 1 and policy process analysis framework in section 2, students will be able to utilize the theories in studying each specific case study in order to get understanding of the practical stages of the policy process; to analyze and discover the problems in the policy process, then to propose the solutions and recommendations for improvement.

### 5. Detailed contents of the course:

	<b>Content</b>	Theory	Exercise	Discussion	Practice	Group work	Self-study
1	Overview of policy process	5	0	2	2	3	2
2	Policy analysis framework	4	4	3	5	5	4
3	Exercise on policy analysis	0	6	5	5	5	10
		9	10	10	12	13	16

## Section 1

### OVERVIEW OF THE PUBLIC POLICY PROCESS

The policy process can be divided into 5 stages. However, a number of following matters should be noted:

- Various viewpoints exist in relation to the division of stages in the policy process. Therefore, the division of stages in the policy process is only of relative nature
- Public policy process is not a linear one, going through each stage in turn before ending with the results, but a repeating process, thus the stages in the policy process are not always perfect.

#### 1.1. Agenda setting

##### *1.1.1. The concept of agenda setting*

The first and most important stage of the policy process is agenda setting. In the stage, public problems are recognized by the society and the State, and are incorporated into the agenda of the State, and then are considered and resolved by the State. Results of this stage include identification of public problems, explanation of the necessity to solve the public problems, and the decision to incorporate public problems into the policy promulgation program of the State. Therefore, *policy agenda setting is a process by which public problems are recognized by the State and incorporated into the State's policy promulgation program.*

##### *1.1.2. Actors in the agenda setting process*

Theoretically, in democratic societies, actors in the policy agenda setting process include the State and the society. However, the degree of participation by the actors depends on such factors as: legal status, professional qualifications (knowledge and experiences on public problems),



and resources. According to existing legal provisions, the actors participating in the public policy agenda setting process in our country include:

- Policy proposers, including: President, Standing Committee of the National Assembly, Ethnic Minority Council and the Committees of the National Assembly, the Government, Supreme People's Court, Supreme People's Procuracy, Ministries, Ministry-level agencies, Governmental agencies, Standing People's Councils and People's Committees); Vietnamese Fatherland Front and member organizations of Vietnamese Fatherland Front.

- Decision-makers of the policy development agenda: The National Assembly making decisions on policy development agenda with regard to policies promulgated by the National Assembly; the Government making decisions on policy development agenda with regard to policies promulgated by the Government; Provincial People's Councils making decisions on policy development agenda with regard to policies promulgated by the Provincial People's Councils.

- Opinion contributors: Based on the policy proposals by the agencies and organizations, the assigned State agency shall develop the policy agenda draft, and arrange to solicit comments from the agencies and organizations on the policy agenda draft.

Therefore, actors in the policy agenda setting process in our country does not only include competent State agencies, but also socio-political organizations, and organizations and individuals in the society.

### ***1.1.3. Agenda setting process***

Public problems must go through complicated processes before being considered to be included in the policy development agenda to be solved. The complexity of this process depends on the authority of policy

promulgation. This process commonly includes the following fundamental steps:

- Formulating policy proposals (policy initiatives): In this step, the policy proposers are required to carry out such activities as: identifying the problems, analyzing the problems, proposing the options to solve the problems, conducting preliminary impact assessments of the options. The contents of policy proposals should specify the necessity for policy promulgation; targets and scope of impact of the policies; main contents of the policies; expected resources, conditions necessary for the policy drafting; preliminary impact assessment report; expected time to submit to competent agencies for consideration and adoption.

- Verifying and preparing the policy development agenda proposal: Upon receiving the policy proposals from the agencies and organizations, the competent State agencies shall prepare a policy development agenda proposal (with regard to policies promulgated by the National Assembly, the policy proposals must be pre-verified).

- Soliciting comments on the policy proposals: The agencies preparing the policy development agenda proposals shall solicit comments from the agencies, organizations, and individuals on the policy development agenda proposals. The solicitation of comments will be carried out by sending the policy development agenda to the agencies and organizations, and publicizing on their web portals. The agencies preparing the policy development agenda proposals shall receive the comments and amend the drafts based on comments from the agencies, organizations, and individuals.

- Adopting the policy development agenda: The policy decision making agencies shall consider and approve the policy development agenda. The adopted policy development agenda shall be the legal basis for the agencies and organizations to prepare the policy drafts. In the policy

development agenda, name of the document reflecting the policies, responsibilities of the policy drafting agencies, of participating agencies and responsibilities of the coordinating agencies, timeline for policy approval must be identified.

#### ***1.1.4. Difficulties and solutions***

In formulating the policy proposals, the policy proposers may face the following difficulties and challenges:

- *Difficulties and challenges in identification of problems and formulation of a quality and highly persuasive policy proposal.* In this stage, the policy proposers do not have much time and resources to collect sufficient required information that serves as the basis for the identification and analysis of the causes of the problems, and their consequences to the society, for the identification of possible options to solve the problems and for the forecast of the options' impacts. Therefore, analysis results from this stage are quite preliminary, not yet comprehensive and detailed.

- *Difficulties in incorporating the policy proposals into the policy agenda.* In order for a policy proposal to be accepted, it should be able to attract attention, support, and consensus not only from competent State agencies, and relevant agencies, but also from the society, particularly people affected by the proposed policies. However, it is extremely challenging to achieve this consensus in practice.

In order to overcome the difficulties, the policy proposers should optimally utilize the existing sources of information by studying secondary documents such as: the system of legal documents related to the problems, study results of the domestic and foreign agencies, organizations, and individuals, statistical data, reports of State agencies; conduct rapid field studies; organize consultations from relevant agencies, scientists, experts in relevant fields, representatives of affected groups, policy beneficiaries;

properly utilize such analysis methods as: Regulatory Impact Assessment (RIA), Cost and Benefit Analysis (CBA) or Cost Effectiveness Analysis (CEA).

## **1.2. Policy formulation**

### ***1.2.1. The concept of policy formulation***

The next stage of the policy process is policy formulation. After the State is aware of the existence of a public problem and includes it in the policy development agenda for solution, a State agency is assigned with the task of developing the policy draft. In order to do this, the policy drafting agency have to look for the possible alternatives to solve the problem. The objective of this stage is to fully study the public problem, determining the objectives of the solution and studying the options to solve the problem or the policy options. The policy option proposals may originate during the agenda setting process, or be developed after the State decides to solve the problem. In both cases, the possible policy options should be examined and limited to the options that can be accepted by policy makers. Policy formulation includes the discarding of the policy options until only a number of feasible options are available (at least 3 options) for the policy decision making agencies to make their last choice. Therefore, *policy formulation is the process of studying and proposing of feasible policy options for policy decision making agencies to choose from.*

### ***1.2.2. Actors in policy formulation***

Social life problems are abundant and diversified, with impacts on various aspects of social life, attracting attention of many actors including the State, organizations, and individuals. A public policy is developed to solve a public problem, and a policy will, upon being promulgated and implemented, have either positive or negative impact, or both to different groups of people in the society. Therefore, the policy formulation process requires the participation of different actors so that feasible policy options can be come up with which can harmoniously deal with the benefits of different groups of people in the society, and bring about the best social

welfare. Actors participate to different extent in the policy formulation process depending on their roles, functions, and capabilities.

In practice, public policies can be developed by central State agencies or local government agencies depending on the nature and scope and public problems that such policies address. In Vietnam, these actors include:

- State agencies (Legislative – Executive – Judicial). This group of actors comprises mainly of the Ministries and Ministry-level agencies at the central level and professional agencies under provincial governments, with state management powers and functions in their assigned sectors and fields. Therefore, the formulation of policies to solve problems arising in their sectors and fields is one of their main functions.

- Political, socio-political and socio-civic organizations. In Vietnam, the political system comprises of three components including the Communist Party of Vietnam, the State, the Political, socio-political organizations (Vietnamese Fatherland Front is the core) and mass organizations, with their own different positions, roles, and functions and having close relationships among one another, forming a system. The Communist Party of Vietnam, as the a ruling party, does not only set the directions and policies to guide the public policies of the State, but also directly leads and instructs the policy formulation. Vietnamese Fatherland Front and other member organizations (including Vietnamese Farmers' Union, Vietnamese Veterans' Union, Vietnamese Women's Union, Ho Chi Minh Youth Union, Vietnam Confederation of Labour) are established from the central to the grass-root levels. The organizations are established to protect the legitimate rights and interests of their members, and also to work with State agencies in the development and implementation of the socio-economic development policies of the country and localities. The organizations participate in the policy formulation process mainly as relevant stakeholders, i.e. their opinions are consulted by policy drafting

agencies or they proactively contribute their opinions on the policy drafts and challenge the policies in the policy formulation process.

- Research institutes (both public and private). In the policy formulation process, the research institutes act as advisors to State agencies in preparing the draft policy options by way of providing theoretical and practical basis for the drafting agencies to identify the feasible policy options that bring about the best social welfare.

- Individual citizens in the society. According to Article 2 of the Constitution 2013 “The people are the owners of the Socialist Republic of Vietnam; all state powers belong to the people whose foundation is the alliance between the working class, the peasantry and the intelligentsia”. Therefore, the people are real owners of the country, while the State is an apparatus representing the people, helping people realize their ownership rights. Therefore, in order to ensure the ownership rights of people, apart from the form of democratic representation mentioned above, people also directly participate in the policy formulation process by way of contributing opinions to the policy drafts upon request by the State agencies. The participation of people in the policy formulation process contributes to the development of feasible policy options, in line with their desires and wishes.

### ***1.2.3. Policy formulation procedure***

The policy formulation process comprises of various contents and follows a certain procedure. This procedure including the following main steps:

- Establishing a Policy drafting team: In order to study and propose the policy options, the policy drafting agency assigned in the decision on policy development agenda sets up a Policy drafting team.

- Developing the policy options. In this step, the Policy drafting team organizes the implementation of such tasks as: First, analyzing fully, comprehensively and in details the policy problems to identify causes and

consequences caused by the policy problems to the society, clarifying the reasons for the promulgation of the policy, identifying the objectives of the policy and the possible policy options to solve the policy problems. Secondly, conducting research of impacts of a number of prioritized policy options and assessing the feasibility of each policy option in order to prioritize them. Third, making recommendations on the choice of policy options to provide the basis for policy decision making agencies.

To perform these three tasks, the Drafting Team needs to carry out such activities as collecting of necessary information for the development of the policy draft (including surveying, assessing the situation of the policy problems; assessing the implementation of the policy (in case of policy reform) and the legal documents related to the policy draft); organizing the study of information, documents and international treaties related to the policy draft; arranging consultations with relevant stakeholders; and developing the policy draft.

- Organizing the solicitation of opinions on the policy draft. Upon the availability of the policy draft, the Policy drafting team conducts solicitation of opinions from relevant stakeholders including opinions of relevant State agencies, opinions of people impacted by the policies and of the society. In receiving and studying the opinions from relevant stakeholders, the Drafting Team amends the draft, prepares a proposal report, a report explaining the adopting of opinions on the draft, a report assessing the impacts of the policy draft, and publicly discloses the documents (on the web portals the drafting agency).

- Appraising the policy options. Upon completing the documents for the policy draft, the policy drafting agency shall send the documents to the competent agency in charge of appraising the policy draft. The appraisal agency organizes the appraisal of the policy draft and prepares the appraisal report of the policy draft. The policy appraisal can be carried out in various

forms depending on the nature, contents and problems that the policy seeks to solve: conducting appraisal meetings, field studies, and piloting.

- Completing the policy draft and submitting to the policy decision making agency: Based on opinions of the appraisal agency, the policy drafting agency studies and amends the draft, and completes the documents to submit to the policy decision making agency.

#### ***1.2.4. Difficulties and solutions***

*Difficulties in developing a quality policy draft and attracting attention and obtaining consensus from the relevant State agencies and the society.* The greatest difficulties faced by the policy drafting agency are to develop a quality policy draft, to attract attention and to obtain consensus from the relevant State agencies and the society, particularly the people directly or indirectly impacted by the proposed policy. The reason is, different from the agenda setting stage, in this stage the drafting agency has to study fully, comprehensively and in details the policy problems, their causes and consequences to the society, identify the options to solve the possible problems and forecast the impacts of each proposed policy option. In order to do these, the drafting agency has to conduct various in-depth studies such as assessment of the actual state of the problems, assessment of the implementation of related legal documents, study of the impacts of the proposed policy options which requires a team of qualified experts with ability to analyze and compile information, a lot of time and resources, yet such resources are not always available and provided. Moreover, this stage attracts great attention from the State agencies (not only the policy decision making agencies, relevant agencies, but also the State agencies who will be in charge of policy implementation), attention from the society (public opinions, people directly or indirectly impacted by the policy, political organizations, socio-political organizations, civil organizations, research institutes, non-



governmental organizations, international organizations – i.e. all concerned stakeholders and people interested in the policy).

In order to overcome the difficulties, the policy drafting agency should inherit the studies and information gained from the stage of development of the policy proposal; accurately identify the types of required additional information and methods of information collection; arrange extended consultations to gain additional information and gain consensus from relevant stakeholders; adopt and positively respond to the contributed opinions; maintain transparency and disclosure of the consultation process, as well as relevant documents (policy drafts, compilation of opinions, explanations of opinion adoption, impact assessment report) to attract attention and obtain consensus in the society; establish a list of policy options in order of priority and only focus on analyzing and assessing a limited number of prioritized policy options (3 - 5 options should be selected).

### **1.3. Policy decision making**

#### ***1.3.1. The concept of policy decision making***

With the recent development of policy sciences, the decision making stage attracts the most attention from the society, because it legalizes the policy options formed during the policy formulation stage, and sets a start for the policy implementation stage. A number of remarkable features of the policy decision making stage include: First, it is not an independent stage, but continuing and finishing the activities conducted in the previous stages of the policy process. Second, it is not a technical process, but a political one, because a promulgated public policy may have positive impacts (bringing about benefits) on this group of people, but may have negative impacts (losses) on another group of people, therefore only politicians authorized by people have the rights to select the options to solve the problems. Therefore, *policy decision making can be understood as the process of selecting objectives and options to solve policy problems.*

### ***1.3.2. Actors in policy decision making***

As mentioned above, policy decision making is a political process, during which politicians or people's representatives act on behalf of the people to choose the policy option to solve public problems. Therefore, the identification of actors in policy decision making depends on the operating method and mechanism of the political system as provided for by the existing legal system. According to the law, the following actors are assigned with the powers of public policy decision making in our country:

- The National Assembly is in charge of making decisions on the basic policies on socio-economic development, ethnic affairs, religions, national finance and monetary, and foreign affairs.
- The Government makes decisions on the policies to exercise the executive power in compliance with the law.
- Provincial People's Councils make decisions on the local socio-economic development policies.

### ***1.3.3. Policy decision making procedure***

The policy decision making procedure depends on the powers of policy decision making. Typically, the procedure comprises of the following steps:

- Submitting the policy draft: the policy drafting agency submits the policy draft documents to the standing office of the policy decision making agency.
- Appraising or verifying the policy draft: Upon receiving the policy draft documents, the appraisal agency or verification agency conducts the appraisal or verification of the contents of the policy draft.
- Considering and approving the policy draft: The policy draft is approved with the following procedure:

+ Presenting the policy draft: Representative of the agency or organization submitting the draft presents the policy draft.

+ Presenting policy appraisal or verification report: Representative of the appraising or verifying agency presents the appraisal or verification report.

+ Discussing the policy draft: The policy decision making agency conducts discussion on the policy draft.

+ Receiving comments and amending the policy draft: The agency submitting the draft, the draft appraising or verifying agency, and relevant agencies receives opinions, amends the draft and prepares the report explaining the adoption of opinions and amendment of the draft.

+ Approving the policy: The policy decision making agency votes to approve the policy draft.

- Signing to promulgate and publicly disclosing the policy.

#### ***1.3.4. Difficulties and solutions***

*The greatest difficulty in this stage is how to choose the optimal policy solution.* In order to choose an optimal policy solution, various conditions are required, such as: the proposed policy options in the draft are designed with good quality and clearly presented; the draft and documents related to the policy draft are provided to the delegates with sufficient time in advance for them to study and prepare questions, and contributive and critical opinions; the discussion of the policy draft must be carried out in a free, interactive, and critical manner; the contributive and critical opinions are reasonably adopted, etc.

### **1.4. Policy implementation**

#### ***1.4.1. The concept of policy implementation***

Policy implementation is a very important stage in the policy process, because the success of a policy depends on the results of policy implementation, i.e. turning the policy contents into practical activities to realize the policy objectives. Therefore, it can be understood that *policy implementation is the process of applying the policies in real life, aiming at realizing the policy objectives.*

#### ***1.4.2. Actors in the policy implementation stage***

The policy implementation stage is complicated with various participating actors, and these actors have interactive relationships with one another. Number and role of each actor depends on the specific policies and context of each country. However, the actors participating in public policy implementation can be grouped as follows:

- *Actors arranging the implementation:* Actors arranging the implementation of the policies include agencies in the State apparatus. Depending on the nature, extent, and scope of impacts of the policies, the arrangement of a specific policy implementation requires different implementation methods and participating actors. For example: central policies require the participation of State agencies from Governmental to grass-roots levels; the implementation of policies promulgated by the provinces/cities only requires State agencies in such localities.

- *Actors participating and cooperating in the implementation of the policies:* The policy implementation process is very complicated, including a series of different actions. This process needs the participation and cooperation of various levels and sectors and the political, socio-political organizations, or in other words, it needs to mobilize the participation of the whole political system in order to form a mechanism for coordinating the implementation in a consistent and uniform manner from the central to the local levels. Actors participating and cooperating in the implementation of policies include: State agencies from the central to the local levels in which

the key actors include the Ministries, Ministry-level agencies, Governmental agencies, People's Committees of different levels and professional agencies of People's Committees of different levels; political organizations, socio-political organizations, civic social organizations from central to grassroots levels such as: Vietnamese Fatherland Front, Youth Union, Women's Union, Farmers' Union, etc. the Societies, Professional Associations, other autonomous civil organizations in the society.

- *Targets and beneficiaries of the policies:* In the policy implementation process, targets or people impacted by the policies are abundant and diversified, including State agencies, organizations, individuals in the society, and even direct beneficiaries of the policies and people who are not direct beneficiaries of the policies.

#### ***1.4.3. Policy implementation procedure***

Public policy implementation is the process of putting the public policy into practice in order to realize the policy objectives. The policy implementation process is carried out by the State apparatus, with the participation of the partners. Depending on each specific public policy, the actors in policy implementation identify the specific policy implementation tasks. However, most commonly, the public policy implementation process is organized into the following steps:

- *Developing and promulgating the documents, programs, and projects for public policy implementation:* Typically, the public policies, as products of the policy making process, only guides the orientation of the objectives and solutions for public problems. Therefore, in order to put the policies into practice, the policy implementation actors will, depending on their powers, promulgate the legal normative documents, programs, and projects to specify the policy objectives and solutions for specific period or locality. In order to perform the tasks, the actors in policy implementation need to carry out the following activities:

+ Studying the policy contents to identify the documents, programs or projects that need to be promulgated or approved.

+ Developing the plan for drafting and promulgating the documents for policy implementation; plan for preparing and approving the programs and projects for policy implementation.

+ Arranging the implementation of the above plans to ensure quality, time and cost saving, and efficiency.

- *Arranging the implementation of the documents, programs, projects for public policy implementation:* After the documents, programs, and projects are promulgated and approved, the implementation actors are assigned with the responsibilities to arrange the implementation of the documents, and to realize the programs and projects. The activities to arrange the implementation of the specific documents, programs, and projects are different. However, below are typical activities:

+ Developing a plan to arrange the implementation of the documents, or preparing a plan to implement the programs or projects.

+ Providing training on the documents, providing necessary knowledge and skills to implement the programs or projects.

+ Propagating, disseminating contents of the documents, programs, or projects.

+ Providing sufficient material facilities, expenditures, organizational structure and human resources to implement the documents, programs, or projects.

+ Arranging the examination and supervision of implementation of documents, programs, or projects.

+ Receiving feedback and adjusting the implementation to make it more in line with actual situation.

- *Conducting preliminary summary, and final summary of public policy implementation:* Periodically, the actors in the public policy

implementation conducts the preliminary summary, and final summary of implementation results. The preliminary summary and final summary of policy implementation is carried out with the bottom up method.

+ First, the agencies and organizations assigned with the implementation of the documents conduct the preliminary summary, final summary of the implementation of such documents, and report to the higher level agencies and organizations. The agencies and organizations assigned with the implementation of the programs or projects conduct the mid-term and final assessments of such programs and projects and report to the higher level agencies and organizations. In the preliminary summary and final summary reports, the mid-term and final assessment reports, the implementation process, results, and limitations should be specified, and recommendations to higher level should be proposed to solve the issues during implementation.

+ Next, based on the preliminary summary and final summary reports, the mid-term and final assessment reports of the lower-level policy implementation agencies and organizations, the highest-level policy implementation agencies and organizations compile a policy implementation preliminary summary, and final summary report. The agencies and organizations ultimately in charge of policy implementation report and explain on the policy implementation results to the policy decision making agencies and the people.

#### ***1.4.4. Difficulties and solutions***

*The greatest difficulties in policy implementation are to ensure the policy implementation process be carried out in a continuous and substantial manner, aiming at achieving the policy objectives. The policy implementation process takes place during a long period, with the participation of many different actors, and in a difficult-to-forecast changing environment. Therefore, the great difficulties and challenges to the actors in*

charge of policy implementation are to ensure the policy implementation process be carried out in a continuous and substantial manner, aiming at achieving the policy objectives. In order to achieve this, the actors in charge of policy implementation need to establish a result-based management model for policy implementation; with appropriate mechanism to have active participation of relevant stakeholders; building trust and maintaining long-term support of relevant stakeholders; forecasting risks and setting the solutions to minimize risks; continually monitoring and providing feedback; carrying out timely adjustment solutions; ensuring disclosure and transparency in implementation process; ensuring timely accountability to relevant stakeholders; building human resources for policy implementation with good capacity, hard-working, and devotion; assessing performance and properly and timely rewarding the individuals and organizations with good performance, and strictly disciplining the individuals and organizations with wrong-doings; timely and harmoniously resolving the conflicts of interest that arise.

## **1. 5. Policy evaluation**

### ***1.5.1. The concept of policy evaluation***

After a public policy is promulgated and brought into implementation for a period of time, the State starts to assess how such public policy had been implemented and what are its impacts on the society. Different individuals and organizations in the society also participate in the evaluation of its ways of operation and impacts to show their support or objection to such policy, or to request for policy changes. Therefore, the concept of policy evaluation is mainly related to the assessment of a public policy in operation, the solutions being implemented, and the objectives being gradually completed. The intensive or comprehensive evaluation of a policy depends on its initial objectives and the solutions under implementation to achieve such objectives.



Various types of policy evaluation such as prior evaluation, operation or implementation evaluation, and impact or ex-post evaluation. Policy evaluation as a stage of the policy process only includes the second and third types of evaluation – i.e. the operation evaluation and impact evaluation. Therefore, *policy evaluation can be understood as the actual and systematic audit of the results of policy implementation and comparing them with the initial objectives in order to determine whether the desired objectives have been achieved.*

### ***1.5.2. Actors in policy evaluation***

The objectives of policy evaluation are to identify the achievements and challenges, to assess the sustainability of policy results, and to provide useful conclusions for the design and improvement of policies in the future. The policy evaluation is carried out by the following actors:

- State agencies: including State administrative agencies (the Government, Ministries, Ministry-level agencies, People's Committees and professional agencies under People's Committees of different levels); political agencies (National Assembly and People's Councils of different levels); judicial agencies (Supreme People's Court and people's courts of different levels); and State research institutes.

- Individuals, organizations in the society: independent assessment organizations, socio-political organizations (Vietnamese Fatherland Front and member organizations of the Vietnamese Fatherland Front), public opinions and people.

### ***1.5.3. Contents of policy evaluation***

Depending on the evaluation objectives, legal status, capacity and resources of each evaluation actor, the policy evaluation is carried out in various forms with significant differences in terms of complexity and formality. However, policy evaluation as the last stage of the policy process

includes two following types of evaluation: performance evaluation and impact evaluation.

#### *1.5.3.1. Performance evaluation*

Performance evaluation aims to review the situation of policy implementation and measure the actual policy implementation results in order to determine the effectiveness and efficiency of the policy, drawing the lessons learnt and making necessary adjustments to improve the implementation results. The objective of this assessment is to determine whether the policy implementation process can be more properly organized and more efficiently carried out.

The performance evaluation comprises of the followings: input evaluation, output evaluation, effectiveness evaluation, efficiency evaluation.

- ***Input evaluation:*** Input evaluation aims to measure the number of input for policy implementation, i.e. the number of inputs used to achieve the policy objectives. The input factors include personnel, offices, equipment, stationery, office tools, information, services, etc. Costs for all such factors are quantifiably measured. Results of input evaluation provide database for the efficiency evaluation of the policies. When conducting evaluation of the input factors, the evaluators need to apply the cost and benefit analysis to calculate the opportunity costs of the input factors.

- ***Output evaluation:*** Output evaluation is to measure the outputs of the policies, i.e. the measurement of outputs of the programs, projects, or specific activities in policy implementation. The objective of output evaluation is to determine what the policies are producing. The policy outputs depend on each policy implementation program, project, or specific activity. For examples, the outputs of a program for investment in material facilities of hospitals for implementation of a healthcare policy are the number of hospital beds, or types of equipment and number of each type of equipment that are

purchased and brought into use. The outputs of a school solidification program for implementation of an education policy include the number of standardized classrooms built, quality and number of equipment for teaching and learning that are purchased and brought into use. Results of output evaluation provide a database for effectiveness and efficiency evaluation of the policies. When conducting output evaluation, the evaluators have to collect data to quantify the results produced by the policy implementation in certain measurement units, and monetizing these outputs. In order to do this well, the evaluators need to apply the cost and benefit analysis. Where it is impossible to quantify the outputs into monetary value, the evaluators apply the cost and result analysis approach.

- ***Effectiveness evaluation:*** Effectiveness evaluation aims to determine whether the policy implementation produces results in line with the policy objectives or not? Effectiveness evaluation means the comparison of the policy implementation results with the policy objectives to determine whether the policy objectives are being achieved or not, and whether the objectives should be amended to be in line with actual situation. Based on such findings, the evaluators may make recommendations on the amendment or changes to the policy implementation programs, projects or activities, even changing the policies. The effectiveness evaluation is very helpful to the policy makers, but it is difficult to carry out because this type of evaluation requires a very large volume of necessary information and highly complicated evaluation process.

In order to well carry out this evaluation, the evaluators need to well conduct the output evaluation and fully and clearly understand the policy objectives, as well as the objectives of the programs, projects, or specific activities for the implementation of the policy.

- ***Efficiency evaluation:*** Efficiency evaluation aims to measure the implementation efficiency of a policy. Efficiency evaluation is to compare the

benefits generated by the policy with the costs for its implementation. Efficiency evaluation uses data gained from the input evaluation and output evaluation. Efficiency evaluation has huge meaning in the context of budget constraint. In order to carry out the efficiency evaluation, evaluators need to well carry out the input evaluation and output evaluation in monetary value, then comparing the results among themselves as follows: First, net benefits are calculated by benefits minus costs. Second, the benefit-cost ratio is determine by benefits divided by costs. And the best way is to combine both methods. In order to quantify the results in monetary value, evaluators need to apply the costs and benefits analysis.

Where it is impossible to quantify the outputs into monetary value, the evaluators apply the cost and result analysis approach. In this case, efficiency is measured by determining the costs required to produce a unit of output, or the volume of outputs produced with a unit of input costs.

#### *1.5.3.2. Impact evaluation*

Impact evaluation aims to discover the changes that have happened, and to which they can be attributed. Treatment effect evaluation is the examination of whether the policy implementation produces expected impacts to the beneficiaries and the society.

Its objective is to assess the impacts and sustainability of the policies, identifying the challenges, thus drawing useful conclusions for the design of policies in the future. Impact evaluation is conducted after a period of policy implementation, typically from 3-5 years. It is very difficult to conduct this type of evaluation because the portion of impact produced by the implementation of a policy has to be determined. In order to solve this problem, evaluators can use quasi-experimental design, random distribution, control group or comparison. Impact evaluation can be carried out by qualitative or quantitative methods (i.e. collection of survey data or

simulation) prior to and after a period of policy implementation. Impact evaluation examine the impacts of the policies through the differences between the results of the same participant before and after the policy implementation (programs, projects, or activities) or between participants and non-participants. However, the best way is to prepare a plan for impact evaluation before the policy intervention starts. Determining which targets receive the policy interventions and which do not, and establishing the baseline information on all evaluation targets.

#### ***1.5.4. Difficulties and solutions***

Policy evaluation is carried out after the policies have been implemented for a certain period of time, thus the greatest difficulty that evaluators face is how to accurately assess the impacts of the policies. The reason is that the treatment effect evaluation requires consistent information and information sources that must be continually collected since before the policy is issued until the time of evaluation. Moreover, policy evaluation is a complicated job requiring evaluators to have in-depth expertise and experience (currently very limited in Vietnam), and requiring significant budget.

In order to overcome the difficulties: First, during the policy formulation stage, a plan for policy monitoring and evaluation, and a system of measurement indicators and performance indicators should be developed. It also means that during the policy design stage, it is required to conduct a baseline study for baseline information collection on the situation before policy promulgation; during the stage of policy evaluation, policy evaluators conduct the collection of same-type and same-source information, using the same information collection and processing methods, but at the evaluation time (if possible, the baseline evaluators should be mobilized for the evaluation). Second, when preparing the estimates and allocation of budget for policy implementation, a satisfactory budget amount should be spared for

policy monitoring and evaluation. Third, there should be a mechanism to attract domestic and foreign individuals and institutes specializing in policy research and consultancy to participate in policy evaluation, including: international organizations, non-governmental organizations, research institutes, universities, scientists, etc. Fourth, there should be a mechanism to mobilize funding sources from domestic and foreign organizations and individuals.

## **PART 2:**

### **ANALYSIS FRAMEWORK FOR POLICY PROCESS MANAGEMENT**

#### **2.1. Requirements on policy agenda setting**

A policy proposal should meet the following requirements:

- The basis for policy problem identification is clearly specified;
- The policy problems are clearly identified;
- The causes of the policy problems are preliminarily analyzed;
- The socio-economic implications of the policy problems are preliminarily assessed;
- The options to solve the problems are proposed;
- The impacts of each option are forecast.

#### **2.2. Requirements on policy formulation**

The development of options to solving policy problems should meet the following requirements:

- The problems are accurately identified;
- The causes of the problems are accurately identified;
- The targets impacted by the problems are accurately and sufficiently identified;
- The consequences caused by the problems to the society and the parties are accurately and sufficiently identified;
- The legal documents and policies related to the problems are fully examined;
- All possible policy solutions are identified;

- The positive and negative impacts of the prioritized policy options are forecast;
- Political, legal, technical, financial, administrative, and social feasibilities of each prioritized policy option are fully examined;
- The effectiveness, efficiency, and fairness of each prioritized policy option are fully examined;
- The objectivity, sufficiency, comprehensiveness and timeliness of the collected information are ensured;
- Relevant stakeholders fully and substantively participate;
- Actors have good knowledge and experiences on problems;
- Contributive opinions from relevant stakeholders are positively received and provided with feedbacks;
- Relevant State agencies well coordinate;
- Proper technical methods and tools are used;
- Drafting team includes people of good knowledge and experiences on the problems;
- A list of prioritized policy options is prepared.

### **2.3. Requirements on policy decision making**

The process of consideration and approval of the policy drafts should meet the following requirements:

- The appraisal or verification is conducted in an impartial and scientific manner;
- The discussion of policy drafts is carried out in a public and transparent manner;
- The receipt of opinions and amendment of the policy drafts is conducted in a serious and impartial manner;



- The consideration and approval of policies are carried out in a public and transparent manner (except for national secret-related policies);
- The best policy options are selected (meeting the criteria on political, legal, technical, financial, and administrative feasibilities);
- Contents of the policies are presented in a brief, simple, and easy-to-understand manner.
- The process and procedure in the policy decision making process are complied with.

#### **2.4. Requirements on policy implementation**

Policy implementation process should meet the following requirements:

- All relevant stakeholders are mobilized in the policy implementation process;
- The documents, programs, and projects for policy implementation are designed without distorting the policies;
- The documents, programs, and projects for policy implementation fully reflect and specify the contents of the policies;
- A framework is developed for policy performance monitoring and evaluation;
- All the risks are identified with risk mitigation measures developed;
- Proper methods and technical tools are used in designing the documents, programs, and projects;
- Agencies in charge of policy implementation are capable, have good sense of responsibilities, and clean motives in policy implementation;
- State agencies and relevant stakeholders are well coordinated during policy implementation;

- Budget allocated to policy implementation is sufficient and in time;
- Budget management mechanism helps ensure saving and efficiency;
- The monitoring, auditing, and inspection are carried out in a timely, impartial, and lawful manner;
- Directing, instructing, and monitoring are regularly conducted during the policy implementation process.

## **2.5. Requirements on policy evaluation**

The policy evaluation should meet the following requirements:

- A system of indicators to measure major policy results (indicators to measure outputs, output results, impact) is identified;
- A system of indicators to measure the input factors and activities (indicators to measure inputs, indicators to measure productivity) is identified;
- The identified indicators are clear, suitable, economic, sufficient, and can be monitored;
- Proper and efficient evaluation methods are selected;
- Proper methods for information collection and processing are selected, consistent with the methods used in policy formulation;
- Policy evaluation is conducted in an independent, objective, and scientific manner;
- Suitable relevant stakeholders are consulted and participate in the evaluation;
- Policy results are evaluated;
- Causes of successes and failures, of the achieved results and limitations are identified;

- Lessons learnt are drawn and recommendations are made to improve the policies in the future;
- An evaluation report is produced which is brief, simple, easy to read, and easy to understand.

## **PART 3: POLICY CASE STUDIES**

### **Case study 1:**

#### **NEW RURAL DEVELOPMENT PROGRAM**

##### **1.1. Background**

After 20 years of implementing the reform policy, under the leadership of the Party, our agriculture, farmers, and rural areas had made quite comprehensive and significant achievements. Agriculture had continued to develop with relatively high speed along the line of commodity production, enhancing productivity, quality and efficiency; ensuring stable national food security; with a number of export commodities holding good positions in the global markets. The rural economy had been shifting along the line of increased industrial production, services, and other trades; the forms of production organization had been continually reformed. The socio-economic infrastructure had been strengthened; and the looks of various rural areas had been changed. Physical and spiritual lives of residents in almost all rural areas had been enhanced. Poverty reduction had achieved significant results. The rural political system had been consolidated and strengthened. Grassroots democracy had been promoted. Political security and social safety had been well kept. The political position of the farmers had been increasingly improved.

However, the achievements had not been corresponding to the potential strengths and advantages and not yet equal among the regions. Agricultural development had not been sustainable, with decreasing growth rate, low competitiveness, not yet utilizing available resources for production development; and limited research, scientific-technological transfer and human resource training. The shift of economic structure and production mode reform in agriculture had been slow, with small and scattered

production being the most common forms; and low productivity, quality, and added value of various commodities. Industry, services and trades had been slow in development, not yet strongly promoting the shift in economic structure and rural labour. The forms of production organization had been slow in reforming, not meeting the demand for strong development of commodity production. Agriculture and rural areas were developing without a master planning, with weak socio-economic infrastructure, and increasingly polluting environment; and limited resilience and response to natural calamities. Physical and spiritual lives of rural residents were still at low level, with high rates of poor households, particularly people in ethnic minority, remote and far areas; poverty gap between rural and urban areas was significant, causing a great many urgent social problems.

In order to overcome the problems and weaknesses mentioned above, at the Party Central Congress VII, session X dated 25 August 2008, the Party Central Committee issued Resolution No. 26 on agriculture, farmers, and rural areas. This was considered the first political and legal document on new rural development in the current period of industrialization and modernization of our country.

The national target program on new rural development was officially launched since 2010 and gained initial results which were evaluated as satisfactory, contributing to significantly and positively change the rural look and economy. In fact, the overall objectives of the program in accordance with Decision 800-QD/Ttg dated 4/6/2010 was identified as “To build new rural areas with socio-economic infrastructure being gradually modernized; proper economic structure and forms of production organization, to associate agriculture with rapid development of industrial production and services; and rural with urban development under planning; to assure a democratic, stable, and traditionally and culturally rich rural society; to protect the ecological environment; to maintain security and

order; and to enhance physical and spiritual lives of people in accordance with the socialist orientation.” The overall objectives were concretized into specific indicators, such as: (1) 20% of communes to meet New Rural standards in 2015 (in accordance with the Set of national standards for new rural areas with 19 criteria); and (2) 50% of communes to meet New Rural standards in 2020 (in accordance with the Set of national standards for new rural areas). The common objectives of the program was also concretized in different sectors such as economy, infrastructure, culture, security, etc.

## **1.2. Policy making contents and procedure**

### ***1.2.1. Contents***

According to resolution No. 26-NQ/TW of the Party Central Committee session X dated 25<sup>th</sup> August 2008 on agriculture, farmers, and rural areas, main objectives for the development of new rural communes were identified as follows:

- *First*, continuously improving physical and spiritual lives of rural people; enhancing people’s intellectual level, providing training to farmers to have high production standards, having proper political awareness, playing the role of new rural area owners.

- *Second*, building a sustainably developed and modern agriculture. Improving productivity, quality and efficiency in production. Agricultural products are highly competitive.

- *Third*, developing new rural areas with synchronous and modern socio-economic infrastructure, with focuses on roads, irrigation, schools, health clinics, residential areas, etc.; developing a democratic, stable, civilized, rich, beautiful rural society, protecting the ecological environment, well keeping traditional culture; well maintaining security and order in accordance with the socialist orientation.

- *Fourth*, strengthening the rural political system under the Party's leadership, building the farmers' class, consolidating the strong worker - farmer – intelligentsia alliance, creating a firm socio-economic and political foundation for the industrialization, modernization, development and protection of the Socialist Republic of Vietnam.

Contents for new rural development specified in the national target program for new rural development (Decision No. 800/QD-TTg dated 04/6/2010) include 11 following contents:

***a. New rural development planning***

- *Objectives*: To meet the requirements of criterion 1 of the set of national standards for new rural areas. By 2011, to basically complete rural master plans nationwide as a basis for building new rural areas and implementing the contents of the National target program for new rural development during 2010-2020;

- *Contents*:

+ Content 1: Planning the use of land and essential infrastructure for the development of commodity agricultural production, industries, small and draft industries and services;

+ Content 2: Planning the development of socio-economic-environmental infrastructure; development of new residential areas and improvement of existing residential areas in the communes.

***b. Socio-economic infrastructure development.***

- *Objectives*: Achieving criteria No. 2; 3; 4; 5; 6; 7; 8; 9 in the Set of national standards for new rural areas;

- *Contents*:

+ Content 1: To complete roads leading to offices of commune People's Committees and transport systems in the communes. 35% of communes will meet standards (communal roads are asphalted or concreted) by 2015, and 70% of communes will meet standards (village and hamlet

roads are basically be hard-surfaced) by 2020;

+ Content 2: To complete the facilities to supply electricity for daily-life and production activities in the communes. 85% of the communes will achieve new rural standards by 2015, and 95% of the communes will meet the standards by 2020;

+ Content 3: To complete the works for cultural and sports activities in communes. 30% of communes will have commune and village cultural houses up to standards by 2015, and 75% of the communes will meet the standards by 2020;

+ Content 4: To complete the facilities for standardization of healthcare services in the communes. 50% and 75% of the communes will meet standards by 2015 and 2020, respectively;

+ Content 5: To improve the facilities for the standardization of education in the communes. 45% of the communes will satisfy new rural standards by 2015, and 75% of the communes will meet standards by 2020;

+ Content 6: To complete commune government offices and supporting facilities. 65% of the communes will satisfy new rural standards by 2015, and 85% of the communes will meet standards by 2020;

+ Content 7: To rehabilitate and construct the irrigation systems in the communes. 45% of communes will meet standards (50% of grade 3 canals or higher will be built permanent) by 2015. 77% of the communes will meet standards (intra-field canals and ditches will basically be concreted under planning) by 2020.

***c. Structure shifting, developing the economy, and increasing income***

- *Objectives:* Achieving criteria No. 10; 12 in the Set of national standards for new rural areas. 20% and 50% of the number of communes meet the criteria by 2015 and 2020, respectively;

- *Contents:*

+ Content 1: To restructure the economy and agricultural production



along the line of developing commodity production with high economic efficiency;

+ Content 2: To enhance agricultural extension work; to step up research and application of scientific and technical advances in agricultural, forestry and fishery production;

+ Content 3: To mechanize agriculture and reduce post-harvest losses in agricultural, forestry and fishery production;

+ Content 4: To conserve and develop traditional craft villages under the motto "every village has its own product" and develop trades and production in line with local advantages;

+ Content 5: To focus on vocational training for rural laborers, promote industries in rural areas, create jobs and quickly restructure rural labor force.

***d. Poverty reduction and social welfare.***

- *Objectives:* Achieving criterion No. 11 of the Set of national standards for new rural areas;

- *Contents:*

+ Content 1: To effectively implement the program on quick and sustainable poverty reduction for 62 districts with high rate of poor households (under the Government's Resolution No. 30a) in accordance with the set of national standards for new rural areas;

+ Content 2: To continue implementing the national target program on poverty reduction;

+ Content 3: To implement social welfare program.

***e. Renewing and developing forms of effective production organization in rural areas***

- *Objectives:* Achieving criteria No. 13 of the Set of national standards for new rural areas. 65% and 75% of the communes will meet standards by 2015 and 2020, respectively.

- *Contents:*

+ Content 1: To develop household, farm and cooperative economies;

+ Content 2: To develop small and medium enterprises in rural areas;

+ Content 3: To formulate mechanisms and policies to promote economic linkage among different economic types in rural areas;

***f. Developing education and training in rural areas***

- *Objectives:* Achieving criteria No. 5 and 14 of the Set of national standards for new rural areas. 45% and 80% of the communes will meet standards by 2015 and 2020, respectively;

- *Content:* To continue implementing the national target program on education and training to meet the requirements of the set of national standards for new rural areas;

***g. Developing healthcare services and providing healthcare for rural residents***

- *Objectives:* Achieving criteria No. 5 and 15 of the Set of national standards for new rural areas. 50% and 75% of the communes will meet standards by 2015 and 2020, respectively;

- *Content:* To continue implementing the national target program in the healthcare sector to meet the requirements of the set of national standards for new rural areas.

***h. Developing a cultured life and developing information and communications in rural areas***

- *Objectives:* Achieving criteria No. 6 and 16 of the Set of national standards for new rural areas. 30% and 75% of the communes will have commune or village cultural houses and 45% and 70% of the communes will have post offices and Internet access points meeting standards by 2015 and 2020, respectively.

- *Contents:*

+ Content 1: To continue implementing the national target program on culture to meet the requirements of the set of national standards for new rural areas;

+ Content 2: To develop information and communications in rural

areas to meet the requirements of the set of national standards for new rural areas.

***i. Rural clean water supply and environmental sanitation***

- *Objectives:* Achieving criteria No. 17 in the Set of national standards for new rural areas; to supply adequate clean and hygienic daily-life water for residential areas, schools, health clinics, offices and public service areas; to fulfil the requirements on ecological environmental protection and improvement in the communes. 35% and 80% of the communes will meet standards by 2015 and 2020, respectively.

- *Contents:*

+ Content 1: To continue implementing the national target program on rural clean water and environmental sanitation;

+ Content 2: To build rural environmental protection works in communes and villages under planning, including: building, rehabilitating and upgrading of water drainage systems in villages and hamlets; building garbage collection and treatment facilities in the communes; improving, rehabilitating cemeteries; renovating or building ecological ponds and lakes in residential areas; and planting more trees within public works, etc.

***j. Improving the quality of Party organizations, governments and socio-political organizations in localities***

- *Objectives:* Achieving criteria No. 18 in the Set of national standards for new rural areas. 85% and 95% of the communes will meet standards by 2015 and 2020, respectively;

- *Contents:*

+ Content 1: To train Party officers to meet standards under regulations of the Ministry of Home Affairs to meet the requirements of new rural development;

+ Content 2: To promulgate policies to encourage and attract trained and qualified young staff to work in communes, particularly in remote and

extremely difficult areas, in order to quickly standardize the staff in these areas;

- Content 3: To provide for additional functions, tasks and operation mechanisms of organizations within the political system to be in line with the requirements of new rural development;

***k. Maintaining social security and order in rural areas***

- *Objectives*: Achieving criteria No. 19 of the Set of national standards for new rural areas. 85% and 95% of the communes will meet standards by 2015 and 2020, respectively.

- *Contents*:

+ Content 1: To issue village rules and conventions on order and security; to prevent and combat social evils and outdated practices;

+ Content 2: To adjust and provide for additional functions, tasks and policies to facilitate the fulfilment of tasks by commune, village and hamlet security forces in maintaining local social security and order to meet the requirements on new rural development.

***1.2.1. Procedure***

Ideas about the program actually originated since 2002 and only became so urgent that it became “indispensable” in 2007-2008. The background for the ideas of a program on building a comprehensively and uniformly developed rural area was complicated, but basically came from two main requirements: (1) requirements on management; and (2) requirements coming from the socio-economic situation, particularly in the field of agriculture since the years of 2007 and 2008.

First, regarding the *requirements on management*, two problems arose. On the one hand, the Ministry of Agriculture and Rural Development was established with the merging of various agencies to carry out the management of both important socio-economic areas of *agriculture* and

*rural development*. However, while the agricultural sector was in practice provided for quite clearly and technically, and thus the organizational structure was quite complete, including functional management entities from central to local levels, the rural development sector had not received much attention until the years 2000. The only entity in charge of this sector, under the Ministry of Agriculture and Rural Development, at that time (and even currently) was the Department of Cooperatives and Rural Development established in 2002 with the merger of Department of Policies and Department of Agricultural Settlement. Even at the time of establishment, Department of Cooperatives and Rural Development mainly focused on the development of cooperatives, a sector that is no longer focused much on in Vietnam, commented an expert from the Ministry of Agriculture and Rural Development:

*“The Ministry of Agriculture and Rural Development was established by merging various agencies... However, it was clear in terms of technical issues for the agricultural sector, while it was not for the rural development sector.”*

On the other hand, the contents on rural development are essentially of multi-sector nature, under management of various other ministries and sectors such as culture, commerce, infrastructure development... Therefore, rural development involves various other ministries and sectors and cannot be smoothly carried out without a focal point for management.

According to an officer of the Ministry of Agriculture and Rural Development: In Vietnam, the policies of the State have been managed under two forms: vertical or horizontal. Horizontally, the policies have been implemented with the top-down approach. The implementation of policies with the top-down approach makes it difficult to understand actual demand of the grassroots level. Vertically, programs may be implemented by

different ministries and sectors in the same location. Therefore, with regard to rural development, there have been many programs such as culture, tourism, poverty reduction, infrastructure development... Recognizing the necessity to promote rural development, the Ministry of Agriculture and Rural Development had proposed such a program. Because the program involved various sectors, the Ministry of Planning and Investment would obviously be the appraisal agency, and many other ministries, sectors, and agencies would contribute their opinions and comments because it was related to the issues under their own management.

Therefore, these two problems required a standing agency to act as the focal point to coordinate, connect, compile, and prepare a master plan, and clearly specify the contents for rural development. Assigned with the task of “rural development”, the Ministry of Agriculture and Rural Development obviously acted as the initiator of the proposals on a program to combine the resources and coordinate the implementation, starting from grassroots level demand. The idea of the program was therefore conceived and proposed since 2000 in line with the functions of the Ministry of Agriculture and Rural Development.

However, the requirement on central management by a focal point was interpreted differently from different State management agencies. The ideas of a focal agency for rural development regarding various contents under management of other ministries and sectors therefore did not attract attention and support of other sectors and management levels during 5 years long. As remembered by an expert:

*“Since 2002, the Ministry of Agriculture and Rural Development piloted a number of programs to connect and rely on the grassroots level for rural development. After that, the Ministry recognized that it was essential to develop the programs based on available resources,*

*because the pilot projects received no support by the ministries. Any ministry wanted to keep their own field, no one wanted to join the same playing field. In 2004-2005, the programs gradually reached an impasse. In 2006, Mr. Phat [later appointed as Minister of Agriculture and Rural Development] would like to return to the hamlet-level program because it cost too much for a program at commune level, about VND 500-700 billion/commune. However, the ministries, particularly the Ministry of Planning and Investment, did not support because they had no economic benefits.”*

The second requirement for the idea on the program was only mature since the period of 2007-2008: requirements originating from agricultural economy and rural development. It could be considered one of the sufficient conditions to form the idea of the Program on new rural area development. During this period, the agricultural economy declined seriously. From the macro perspective, the period was an economic crisis (from the perspective of GDP growth) in Vietnam. However, the most notable point was that the decline happened mostly in rural areas, causing the greatest difference in GDP growth between the urban and rural areas (Figure 1).

In practice, the period of 2007-2008 could be considered a period of agricultural economy crisis when prices of agricultural products such as coffee, rice... went down dramatically, as observed by an expert in the agricultural sector:

*“The period of 2007-2008 experienced an economics crisis when prices of agricultural products plummeted. Coffee price went down to all time low, at just a few thousand dong a kilogram... I think the other [other ministries and sectors] showed their sympathy because of this difficult time. If in such a time like now, it would be very difficult to ask for such a program.”*

From the Ministry of Agriculture and Rural Development, the reasons provided by the Ministry based on awareness of the necessity of a program due to the demand for overall management of the issues related to rural development. Such issues were individually managed by different ministries and sectors. For example, rural modernization may be related to roads and infrastructure, an issue which heavily involved Ministry of Construction. Another rural development issue may be much related to the development of commerce such as markets, commercial centers... which involved the Ministry of Commerce. The cultural issues such as commune house of culture... are under management of Ministry of Culture, Sports, and Tourism (former Ministry of Culture and Information). Therefore, if each Ministry conducted their own programs without coordination, the implementation of a program may cause difficulties to other programs because they would be implemented in the same localities. Obviously, Ministry of Finance was in charge of managing the fund and sources of fund and Ministry of Planning and Investment was in charge of approving of the implementation plan. A joint coordinating agency for rural development did not exist before 2010.

Regarding this problem, other ministries and sectors had totally different awareness. For example, the Ministry of Planning and Investment said that programs for rural development had been carried out without any significant problems. Thus the question raised by the Ministry of Planning and Investment was that: why would any change be necessary? Besides, this Ministry said that many programs were being implemented by other ministries and sectors nationwide with their specialized expertise. Therefore, would it be reasonable if the Ministry of Agriculture and Rural Development acted as the focal point to lead the program when it only had professional knowledge on agriculture. MARD's awareness of the necessity of a coordinating agency since early 2000s was criticized and rejected upon



soliciting opinions in the Government because such a program had to be first commented by the Ministry of Planning and Investment. Said an expert of the Ministry of Agriculture and Rural Development, who participated in the program drafting team since the early days:

*“According to the procedure, the program had to be appraised by the Ministry of Planning and Investment appraisal. However, the two proposals prepared by us were rejected.”*

Besides, awareness of the policy implementation was also different. If the previous policies were mainly carried out with the top down approach, the Ministry of Agriculture and Rural Development would like to have a development program originating from the demand of the grass-root level, focusing on the grass-root level. However, awareness of the Ministry of Agriculture and Rural Development on the problem was still very basic. The observations of *practical problems in a number of policy programs, together with the pilot results in 17 communes were considered sufficient basis for the implementation of a nation-wide program.* In fact, lessons learnt and serious studies were available during this period, yet they were not received and focused on by the Ministry of Agriculture and Rural Development. There were no references to any full or formal studies regarding the appraisal of the demand and requirements for the implementation of the new rural development program. An expert in the Program Drafting Team revealed:

*“There was actually no comprehensive study. With the experiences in Korea, China, and results of the pilot programs, we thought that the program was necessary. Our common approach had always been top-down. The Ministry of Agriculture and Rural Development had piloted some connection and grassroots-based programs since 2002.”*

Meanwhile, the implementation of all programs until such time (about the year 2000) and most programs until now had been centralized, with the top-down approach. According to which, the Ministry of Planning and Investment is in charge of making the master plan for many programs. Other ministries and sectors are responsible to implement their own areas in such programs. For example, the national target programs on poverty reduction such as Program 135 or 30A (led by Committee on Ethnic Minority Affairs and Ministry of Planning and Investment) have been implemented similarly. Fundamentally, the implementation procedure of such programs is as follows:

- The localities (typically district level) propose their demand.
- The higher level agency (provincial level) compiles the demand for various fields under management of the line Departments.
- The Provincial level (Departments of Planning and Investment) compile a general plan and submit to the Ministry of Planning and Investment.
- The Ministry of Planning and Investment coordinates with the Ministry of Finance to approve the plans of the Provinces and hold “sessions for the provinces to defend their plans”.
- The Ministry of Planning and Investment issues decisions on approval of amended plans of the Provinces.
- The Provinces receive their plans and wait for allocated State budget to implement the programs through the Departments.

The problems related to this centralized implementation approach were raised in many studies, assessment reports by various organizations

and individuals<sup>1</sup>. As commented by an expert from the Ministry of Agriculture and Rural Development:

*“Our management approach is either horizontal or vertical... Vertical approach is problematic and all top-down. Therefore, it happened that a commune is covered by two different power networks, one from program 135, one from the power sector. They both made investment, with the two networks running parallel. The problem here was the lack of a coordinating agency, and most importantly, the communal government played no role at all.”*

Another issue in the Program faced with different awareness was resources and program contents. With experience from the pilot program in 17 communes, the Ministry of Agriculture and Rural Development was aware that the assigned resources must match with the proposed program. When acting as the focal point in the pilot program in 17 communes, the Ministry of Agriculture and Rural Development met a lot of difficulties in implementation. This was particularly the case when the program required a large amount of funding. Meanwhile, the Ministry of Finance was in charge of balancing and allocating the overall budget. Other ministries and sectors could only focus on the activities under their management and using the budget allocated by the Ministry of Finance for implementation and thus they had no awareness of overall management. Thus the coordinating role without any allocated resources would only for “compiling, reporting”. Said an expert of the Ministry of Agriculture and Rural Development:

*“After the pilot program in 2002, we understood that any programs should be associated with available resources, because the pilot projects received no support by the ministries. Any ministry wanted to keep their own field, no one wanted to join the same playing field.”*

Thus, the idea of the Program on new rural area was rejected immediately in the meetings of the Government. The strongest objection came from the Ministry of Planning and Investment. In fact, according to the Ministry of Planning and Investment, many rural programs were assigned to different ministries and sectors to implement in different localities. Therefore, it was not necessary to have “another” program for the same purpose. In other words, the Ministry of Planning and Investment only considered the program on new rural development as a general program combining the programs under implementation, without any change in nature, which were already led and compiled by the Ministry of Planning and Investment.

Finally, with the advices and opinions of a number of Party officials, the policy proposal team in the Ministry of Agriculture and Rural Development managed to incorporate a number of the policy contents into Resolution No. 26-NQ/TW dated 5/8/2008 at the Seventh Congress of the Central Committee X on agriculture, farmers, and rural areas. It should be noted here that with the adoption of the resolution of the Party Central Committee, the role of the Ministry of Planning and Investment was not as direct and as significant within the Government. At this level, the Ministry of Planning and Investment was only a representative, similar to representatives from other agencies. Therefore, the Ministry of Agriculture and Rural Development successfully defended the two contents in Resolution 26: (1) 50% of the communes meeting the standards of new rural area until 2020 and (2) during the period until 2010, one of the urgent tasks was to implement the program of “new rural development”. Resolution 26 became the “precious royal sword” for the Ministry of Agriculture and Rural Development to later request the Government to establish a Steering Committee for the development of the National target program on New rural

area. Remembered an expert of the Ministry of Agriculture and Rural Development who joined the Program since its early days:

*“It should be well noted that Deputy Prime Minister Nguyen Sinh Hung at such time was considered a supporter of the program on new rural development. However, according to the opinions of the incumbent Deputy Prime Minister, the Government could not support the program directly if lower level agencies (in this case the Ministry of Planning and Investment) objected to it. Therefore, it was not until the contents on new rural areas were included in the Resolution of the Party’s Central Committee that the Government and Ministry of Planning and Investment no longer objected to the proposal on the development and implementation of the program.”*

Another issue worth noting was that the Ministries in general and the Ministry of Agriculture and Rural Development at that time only considered the policy program only as the numerical criteria. Therefore, the contents in Resolution 26-NQ/TW dated 2008 on agriculture, farmers, and rural areas and even the later Program on new rural area only included the planning criteria (see details of Resolution 26-NQ/TW and Decision 800-QD/TTg approving the Program on New rural area). Meanwhile, the figures on demand and resources were not mentioned and cared about at this time.

After Resolution 26 in 2008, the Steering Committee and Program Drafting Team were established. Deputy Prime Minister Nguyen Sinh Hung was appointed the Head of the Steering Committee. The Drafting Team comprised of experts from the Ministry of Agriculture and Rural Development. The process for drafting the contents of the Program on New rural area comprised of the following main steps:

- (1) Establishing the Steering Committee headed by Deputy Prime Minister Nguyen Sinh Hung;
- (2) Establishing the Drafting Team at the standing agency (Ministry of Agriculture and Rural Development) to conduct the preparing of the Program Outline;
- (3) Soliciting opinions from the ministries and sectors on the Outline (in fact, steps 2 and 3 were repeated several times because it was not initially supported by the ministries and sectors. However, with the opinions from the Party committees and agencies and the results of the pilot program in 11 communes of the Party Secretariat, the Outline was adopted);
- (4) The Drafting Team continued to prepare the Detailed Program Outline;
- (5) The Ministries and sectors added to the Detailed Program Outline with regard to the issues under their management;
- (6) The Project for the National target program on new rural development was submitted to the Government.

The development and drafting of the Program on New rural area actually lasted for two years, from 2008 to 2010. In the Program on New rural area, a great number of contents and programs would involve other ministries and sectors. Thus, it was easy to understand that no other ministries really wanted to support. A member of the Drafting Team revealed: *“The idea was born but the development process during 2008-2010 was very difficult. Because no ministries would like to be under that “impossible circle”. No-one agreed”*. During the development of the contents for the Program on New rural area, there were conflicts among the ministries and sectors. As expert in the Drafting Team said: *“Our policy process was carried out using a collective decision making,*

*i.e. an agency was in charge of developing, others in charge of commenting, adding more if there was any benefits for them, or rejected if there was none, saying that it was overlapping.”*

Figures on existing and required resources to carry out the programs were very limited. Especially, as requested by the Ministry of Planning and Investment, the policy formulation procedure required complete reports on actual state as well as impact assessment reports on economic and social aspects. However, as “this was a new program” and must be carried out quickly in accordance with Resolution 26-NQ/TW, the above requirements were either allowed to be completed later or ignored by the parties. Said the Drafting Team:

*“The policy process included workshops to solicit expert opinions,... yet the comments were mostly formalistic, with lots of compliments, and just a few critiques, but all ideas came from the drafters, not much contribution from the localities.”*

It can be said that the drafting process in fact involved mostly the officers in the Drafting Team who were born, grew up, and worked in the Red River delta.

Though there were such problems and difficulties, the drafting process was finally completed in 2010 with Decision 800-QĐ/TTg approved by the Prime Minister on 4<sup>th</sup> June 2010. Different from other programs or policies, the drafting process of the Program on New rural area had a number of advantages as follows:

After the approval of Decision 800 (4/6/2010), the Program on new rural development was widely implemented in the country. However, because the program had a very large scope, with significant funding,

implemented in the whole nation, and many contents were not very clear, the training and disseminating of policies were quite limited, mostly in the form of documents sent from the Central Steering Committee to the localities through different levels. The provinces themselves were “told” to try and well implement the programs in accordance with the set criteria. During this period, the common understanding of many provinces was similar to that of other previous programs: *this was a State program, funded by the State and therefore must be well implemented to be granted with the State budget.*

The Budget source “turned out” not sufficient for such a huge program. In practice, though the funding structure was provided for in the Program Outline, in which the State budget source was only a portion, though quite significant (40%), the total fund required to carry out the program was much greater than the initial estimates. The reason was that the estimates were based on the results of a pilot program, in the communes where the conditions for program implementation were relatively better than those in other localities nationwide. Thus the State budget was insufficient for the portion of 40% of total program funding, as admitted by an officer in the Program Steering Committee:

*“At first, the estimated budget for each commune was VND 175 billion, the localities tried to exaggerate the fund because they thought the fund came from the State, even to the amount of VND 700 billion. Yet, due to insufficient appraisal in terms of budget, we had to amend the programs as follows: a number of small facilities would receive 100% funding by the State, the remaining facilities would only receive a portion of funding from the State.”*

The implementation process of the Program on New rural development in accordance with Decision 800 obviously met with many



problems. Various contents of the program may went against existing laws and regulations. For example, the existing investment procedure required the provision of VAT invoices for all services. However, there were no enterprises in some localities to provide VAT invoices. Similarly, the existing provisions required the investors to conduct public procurement if total investment was higher than a certain level (e.g. VND 500 million). However, in carrying out the construction projects in many localities, there were not enough legal entities to participate in the bidding. Besides, the program permitted the awarding of works to communities/workers/direct contracting which was against the public procurement provisions. An officer in the Steering Committee remembered:

*“During the program implementation, VAT invoices were required for all services. Yet there were no enterprises in some communes in Dien Bien, thus it was impossible to have any VAT invoices. Finally, the problems of invoices were arranged with the help of some enterprises as requested by the officers at Provincial level.”*

According to the current financial regulations, budget for monitoring was relatively insignificant (less than 3% of total investment). With such budget, monitoring expenditures were only sufficient for activities of officers at the provincial level. Therefore, the lack of strict monitoring resulted in many problems during the implementation of the program in the localities. The level of reliance on the State budget was different among provinces. Some provinces were more active because they had better revenues. Meanwhile, investment regulations were the same in all provinces. Thus, when the State budget was insufficient and later tightened, the provinces who relied much on the State budget failed to resolve the difficulties to be able to mobilize resources. The program implementation in

these provinces was therefore very slow for a long period. An expert in the Steering Committee summarized:

*“Many provinces completely relied on the State budget and were very inactive. There were provinces whose road construction for three years was not completed as much as in a commune in another province.”*

The criteria set out in the Program were applied to all provinces nationwide. Yet, each province and locality had very different characteristics in terms of terrains, population density, traffic demand, cultural demand, etc. Therefore, such fixed criteria posed various issues during the early period of implementation, not appropriate in many provinces, even impossible to be realized due to such differences. For example, the traffic problems were narrated by an expert in the Steering Committee:

*“The contents of the program sometimes could not be completed after two years. Because regarding an issue, there were normally two opinions so very different that no conclusion could be drawn. For example, regarding the road standards, the Red River Delta and the transport sectors required the road width of 3.5-4m. While the roads were not required to be wide in Bac Kan province. Because according to the province, 10 kilometers of 2.5 meter-wide road would cost VND 15 billion and serve 03 households, who would invest? Thus it was impossible to conclude.”*

Therefore, the policy implementation process since 2010 until now was actually a process of “learning by doing”, a learning process of all participants, and there have been many positive changes.

In conclusion, the Program on New rural area has achieved certain successes until now. According to the latest summary report of the

Government, as of end of 2014, 785 communes met the standards (accounting for 8.8%); 1,285 communes (14.5%) achieved 15-18 out of 19 criteria; 2,836 communes (32.1%) achieved 10-14 out of 19 criteria; 2,964 communes (33.6%) achieved 5-9 out of 19 criteria; 945 communes (11%) achieved less than 5 out of 19 criteria, and no more communes achieved no criterion. Particularly, there were 2 districts (Xuan Loc and Long Khanh) in Dong Nai province were recognized by the Prime Minister to meet the new rural standards. Therefore, though final results were not available, according to the summary reports, the objectives set by the Program for 2015 regarding the percentage of communes that meet standards may be achieved. In the coming time, the contents of the Program will continue to be strongly pushed and suggested to be included in the agenda of the Party Congress at different levels, an activity that will potentially further accelerate the implementation of the set objectives.

However, there are still many problems in the policy process that need to be solved to ensure the effectiveness and efficiency of the Program.

### **1.3. Discussion questions**

1. How was the idea of the Program formed?
2. Which actors were involved in identifying the necessity of the Program?
3. What were the difficulties faced in identifying the Program as an important problem which needed to be included in the agenda (the process of turning the idea of the program into practice)?
4. Why were conflicts in awareness and necessity of the Program? How were such conflicts resolved?
5. Which actors participated in the program development stage (drafting and developing the contents, approving)? Please comments on the Program drafting and promulgating process? Which were the advantages and limitations of the process?

6. Which actors participated in the program implementation? Evaluate the advantages and limitations of the Program implementation process. With the information gained from the case study, what were the causes of such limitations?
7. Please relate the development and implementation procedure for the Program on new rural development with the theory on Policy process that you have learnt in order to indicate the fundamental limitations in the procedure and to propose the solutions for overcoming the problem.

## Case study 2:

# MASTER PLANNING ON TOURISM DEVELOPMENT OF THE NORTHERN MIDLAND AND MOUNTAINOUS AREAS

## 2.1. Context of planning formulation

The Northern Midland and Mountainous Areas (NMMA) is one of the most difficult areas of the country. At the time of implementing the Resolution No. 37/2004/NQ-TW and the Decision No. 79/2005/QĐ-TTg, the socio-economic conditions of the NMMA were extremely difficult. In 2004 and 2006, the average income per capita of the area was the lowest nationwide, with just VND 327,000 and VND 442,000/month (Table 1). In 2010, this situation was not improved much. The NMMA remained the poorest area with a growing income gap compared to other localities.

The NMMA was also the area with the highest poverty rate nationwide from 2002 to 2008, or even to present. The proportion of poor households in the NMMA in 2002 was nearly 50%. This poverty rate decreased in the following years, but remained at above 30% in 2008 and was the highest poverty rate nationwide.

For the difficult socio-economic situation of the NMMA, the promulgation of the Party's and State's policies to promote the socio-economic development and national security and defense in this area is assessed as necessary and timely (Conclusion 26/2012/TW-KL).

The NMMA is the region with a lot of potentialities for tourism development to attract both Vietnamese and foreign tourists. According to the assessment of Vietnam's tourism management agencies, the NMMA has potentialities to develop 12 out of 46 national tourist sites<sup>2</sup>. However, to transform potential resources into products and develop the tourism industry,

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<sup>2</sup>Vietnam's master plan for tourism development in 2011-2020 period, with vision to 2030

a variety of elements are required, from infrastructure conditions (traffic roads, electricity, water supply, communication, etc.) to tourism development conditions (hotels, restaurants, recreation establishments, labor, etc.) as well as conditions on tourism management and tourism business development. In the difficult socio-economic situation, the tourism industry in the NMMA only developed at low level in 2001-2005 period (see appendix 1 on tourism development indicators of Vietnam and the NMMA in 2001-2010 period).

The Tourism Development Planning for the provinces of the Northern Midland and Mountainous Areas (hereinafter referred to as the Planning) is originated from the guideline of Vietnam's Central Communist Party mentioned in the Resolution No. 37-NQ/TW dated 1 July 2004 of the Politburo on orientations for socio-economic development and assurance of national defense and security in Northern Midland and Mountainous Areas (NMMA) till 2010. The Resolution provided the targets on speeding up the socio-economic development and assigned duties for agencies in the Party and Government to establish and organize the implementation of appropriate solutions.

On that basis, the Decision No. 79/2005/QD-TTg dated 15 April 2005 promulgates the Government's Action Program on implementing the Resolution No. 37-NQ/TW of the Politburo. The purpose of this Decision is to direct and monitor the development management and investment to set the basis for all of the national and local authorities, enterprises and economic components to target their activities at the socio-economic development and national security & defense of the NMMA. The duty of the Vietnam National Administration of Tourism is "formulating the tourism development plan for the NMMA till 2020 to submit to the Government in the quarter II of 2005". This is one of the 23 duties related to the review, adjustment and supplementation of the master planning for

socio-economic development and the planning for sector development in combination with the plan for 2005-2010.

In 2007, the Vietnam National Administration of Tourism was merged into the Ministry of Culture, Sports and Tourism, so the planning formulation was assigned to the Ministry of Culture, Sports and Tourism. The Minister of Culture, Sports and Tourism assigned the planning formulation duty to the Planning Department under the Institute for Tourism Development Research to directly implement.

By late 2008, with the Decision No. 91/2008/QĐ-BVHTTDL dated 31 December 2008, the Minister of Culture, Sports and Tourism approved “the master plan on tourism development in the northern midland and mountainous areas till 2020”.

## **2.2. Contents and process of the policy**

### **2.21. Contents**

The policy objective is to formulate the tourism development orientation of the area to set the basis for its socio-economic development activities in which tourism is one of the important industries. The planning is the State’s legal document guiding the tourism investment and development of the locality.

The planning is consistent with regulations of the Governmental Decree No. 92/2006/ND-CP. Its contents include assessing the current status and potentialities of tourism, determining the tourism objectives and orientation, defining basic resources for developing tourism and working out development solutions in 2008-2015 period. Within the scope of the planning, specific action programs have not been designed. The particular resources for implementing the planning have also not been clarified.

The planning is mainly used as the basis for some localities in their tourism development strategies and as the reference for specialized agencies. However,, it remains unknown to some other localities (provinces)..

### **2.2.2. Policy process**

With the objectives of “directing and governing the development management and investment; setting basis for national and local authorities, enterprises and economic components to orient their activities...; speeding up the socio-economic development and ensuring national defense and security of the region...; exploiting the strengths...; preserving and promoting the cultural identities...; firmly protecting the sovereignty” (Decision No. 79/2005/QD-TTg), the Government has assigned the Vietnam National Administration of Tourism to formulate a master planning on tourism development of the NMMA. After the Vietnam National Administration of Tourism was merged into the Ministry of Culture, Sports and Tourism, this assignment has been given to the Institute for Tourism Development Research.

Plannings, including the tourism planning, are one of the important instruments to determine the orientations, objectives, missions and overall solutions in the development of the industries. The Law on Tourism 2015 also defines the necessity of formulating tourism master planning «for the country, tourism areas, key tourist destinations and centrally-run provinces and cities».

However, the guideline on formulating the master planning for tourism development of the NMMA does not fall within the requirements of formulating the tourism planning system from the country, region to provinces and cities as defined in the Law on Tourism 2005, but is implemented in accordance with the Decision No. 79/2005/QD-TTg based on the Resolution No. 37/2004/NQ-TW. Regarding the time, the Prime



Minister's Decision No. 79/2005 on assigning the Vietnam National Administration of Tourism to draft the planning was promulgated in April 2005 while the Law on Tourism was passed in accordance with the Resolution of the National Assembly in May 2005.

*« In 2006, there was a top-down direction for the Institute to implement the planning. This was quite an urgent direction. At that time, there were also no resources for implementing the planning »*  
(An official of Planning Team said).

It can be said that the planning is formulated as a duty defined by the senior authorities, aiming at solving some key and breakthrough economic issues; or as an instrument to execute a specific duty. The need for policy is determined based on the top-down direction rather than the bottom-up one. Nonetheless, to a certain extent, the policy need of the higher authority also roots from the actual experience in management when defining tourism is one of the important industries which need a quick formulation of development orientation policies.

The planning process is divided into three stages, including formulation, appraisal and approval.

*\* Planning formulation*

The basic contents of the tourism planning are defined in the Law on Tourism promulgated in 2005. The seven contents of the planning can be summarized into three parts, including: analyzing and assessing the current status and potentialities; developing orientations, strategies and objectives; and designing implementation activities. The master planning formulation process for the tourism development of the NMMA is implemented as follows:

- Analyzing the current status and potentialities. This is the process of collecting information and organizing the assessment research. To

implement this task, the Drafting Team mainly uses secondary information. In 2000-2001 period, the Institute for Tourism Development Research (under the Vietnam National Administration of Tourism at that time) formulated the strategy and master planning for Vietnam's tourism development in 2001-2010 period. During the formulation, many researches and surveys were conducted at localities. The formulation process of the strategy and planning also gathered many leading experts in the tourism and relevant sectors. This was quite a diverse data source that could be exploited to serve the formulation of the master planning for tourism development of the NMMA. It was also the mainly-used secondary data source. However, as of 2007 when the master planning for tourism development of the NMMA was implemented, the data collected in 2000-2001, especially those on current status assessment had become outdated. Meanwhile, no further researches, primary data collection or assessments were conducted by relevant parties, except for some special subjects which were assigned to some experts out of the Drafting Team to conduct.

*“Now [2014], it is required to survey all localities, listen to proposals from localities and make the overall balance .....Previously (when formulating the planning for 2008), it was different. The data were available. We used the existing data rather than conducting field surveys”* (Interview with a planning official).

*«The statistical data were outdated and inconsistent among ministries. But they were the only basis for the Team”.*

[An official of Planning Team]

The lack of investigation, survey, research and data collection activities was a limitation of the planning formulation in 2008.

- The development of strategic orientations, objectives as well as implementation measures mainly based on the drafting team' experience. Although the Drafting Team were experts experienced in tourism development planning, the pioneering and practical contents of the planning remained restricted owing to the lack of surveys and consultation of stakeholders and localities.

*\* Planning appraisal*

After preparing the draft, the Drafting Team shall submit it to the management authority (the Ministry of Culture, Sports and Tourism) for appraisal. Some tourism experts of the Ministry shall be assigned to study and comment on it. It shall be revised and amended for several times before being approved.

*“I remember once the leader of the drafting team being on a business trip in other province had to return to Hanoi immediately to explain about the content of the draft”..... “The process of reviewing and amendment took a lot of time” (Interview with a planning official).*

Except for the consultation of experts from the Ministry of Culture, Sports and Tourism, the master planning for tourism development of the NMMA in 2008 had no engagement and participation from other stakeholders, including localities where the planning would be deployed.

*“Now [2014]...after being drafted, the planning is sent to the localities for them to give feedback....but previously (in 2007), this was not done” (Interview with a planning official).*

*c. Planning approval*

The approval process is implemented within the Ministry of Culture, Sports and Tourism. The Drafting Team revealed that in 2008 and before that “there was no appraisal and approval committee”. These tasks were assigned to functional departments of the Ministry. After the Drafting Team

finalized the contents in accordance with the comments and contributed opinions and reported to, the Minister of Culture, Sports and Tourism, he/she shall approve the planning. The Decision No. 91/2008/QD-BVHTTDL dated 31 December 2008 of the Minister of Culture, Sports and Tourism approved “The master planning of tourism development for the Northern Midland and Mountainous Areas till 2020”.

*« It is a pity that this planning was not signed by the Prime Minister or the Deputy Prime Minister but was signed by the Minister. As being signed by the Minister, how could it be effective for other ministries to implement? »*

[An official of Drafting Team]

The master planning of tourism development for the NMMA 2008 was assigned to a Drafting Team under the Institute for Tourism Development Research that was a research institute functioning in formulating tourism development plannings nationwide. After being drafted by the Drafting Team, the planning was only consulted by some tourism experts in the Ministry of Culture, Sports and Tourism. There were no consultations and workshops to obtain comments, opinions and feedbacks from the stakeholders. The introduction background of the policy along with the lack of relevant resources were the causes of its limitations.

*“In the context of 2006 when the planning was implemented, it was required to be conducted very urgently in accordance with the request of the Government Office...and as “a political task” without budget for organizational implementation. Only after a long time was the budget provided”...“We could only consult several experts and ask them to conduct some special subjects” (Interview with an official of the Drafting Team).*

The master planning for tourism development in general and for the NMMA in particular got involved with many stakeholders from the governmental authorities and tourism management agencies of provinces to enterprises and the local people. However, during the formulation of the planning in 2008, there was no participation of them. This was explained by some experts as follows:

- Limited resources: There was no budget for conducting surveys, workshops, assessments; or otherwise the budget was provided late. Instructions for preparing budget for the implementation were only issued in the Decision No. 281/2007/QD-BKH dated 26 March 2007 and the Circular No. 03/2008/TT-BKH dated 1 July 2008 of the Ministry of Planning and Investment while the planning was assigned to implement in 2006.

- Incomplete legal instructions and requirements: At the time of implementing the planning, relevant guiding documents of the State agencies were just in the process of finalization. The Decree No. 92/2006/ND-CP dated 7 September, 2006 of the Government replaced the Circular No. 05/2003/TT-BKH dated 22 July 2003 of the Ministry of Planning and Investment on the planning. However, only after the Decree No. 04/2008/ND-CP dated 11 January 2008 of the Government and especially the Circular No. 03/2013/TT-BKHDT dated 31 October 2013 of the Minister of Planning and Investment (providing guidance on composing, appraising, approving, amending and promulgating socio-economic development master plan; industrial, sectoral and key products plans) were issued, procedures and requirements on formulating plannings were specified. The roles of parties involving in the preparation, appraisal and approval were only clarified in later documents.

- At that time, the planning was considered as a more technical duty rather than a social duty. In other words, the knowledge and perception of

experts played the main role while the opinions of stakeholders were paid less attention to.

The initial data for the research and preparation of the planning were also re-used data. 1-2 experts in relevant fields (such as geography, culture) were mobilized to participate in the planning, but at a limited level (just providing ideals and writing 1 or 2 special subjects). The ideas for the planning were mainly based on the experience of the three-people Drafting Team.

Beside the Drafting Team, some experts (officials) of the Ministry of Culture, Sports and Tourism also made certain contribution to the contents of the planning during the appraisal process. Although their contribution was evaluated as “*having positive impacts on the research contents*” (Interview with members of the Drafting Team), they were mainly professional (expertise) impacts rather than practical impacts. For plannings of sectoral development, especially those of tourism sector that is involved with many other sectors and industries with the engagement of various components in the society, the consultation of stakeholders is very crucial. However, the planning 2008 only got the engagement of the Ministry of Culture, Sports and Tourism that was also the agency drafting and approving the planning.

*“At that time, there was no regulation that ministries shall review plannings of each other...If there might be any conflicts, they would be only addressed in the planning for implementation rather than being referred to other relevant groups/ministries. Now, in order to report to the Vietnam National Administration of Tourism, the planning must have been consulted involved ministries twice, consulted foreign experts once and obtained comments and feedback in a workshop with ministries and localities once. After that, it shall*

*be amended for finalization.*” (Interview with an official of the Drafting Team).

The lack of participation of stakeholders also results in the limitations in the idea development, acquisition and completion of ideas of the Drafting Team.

*“The quality at that time was not equal to present, from the methodical organization to the writing style, etc. At present, procedures form the basic investigation onwards have been formulated.”* (Interview with an official of the Drafting Team).

At the end of 2008, the master planning for the tourism development of the NMMA was approved by the Minister of Culture, Sports and Tourism at the Decision No. 91/2008/QD - BVHTTDL dated 30 December 2008. This is the first regional-level master planning which has great significance to the formation of the awareness on the importance of the tourism area planning later. However, the direct significance of this planning is shown through the limitations during the implementation process.

As a regional planning, the master planning for tourism development of the NMMA functions like a basis for provinces to study and make their own master plans of tourism development. This is also a mandatory requirement when establishing the planning for lower levels to ensure the systematicity and the consistency of legal documents.

*“Our planning is used as the legal basis for other plans. It is mainly the legal basis rather than the professional basis”* (Interview with an official of the Drafting Team).

Despite the role of orientation and legal basis, the planning has failed to show its applicability clearly. This can be seen right in the contents of the planning in which beside the orientation contents, the development objectives and implementation solutions are also for orientation. In addition,

there are no tools to assess the implementation of the planning. Meanwhile, provinces in the region also formulate their own master plans of tourism development to set the basis for orientation and management of the tourism development in their localities. The overlap in scope and contents results in the fact that the executing people will pay more attention to implementing the provincial-level plans (which have been already edited to fit the regional plans) rather than caring about the contents of the regional plans.

In principle, the Ministry of Culture, Sports and Tourism who approves and announces the plan, shall organize the implementation. However, regarding the functions and missions, provinces are direct authorities for managing the tourism development in their localities. The plan is the task assigned by the Government (as per the guideline of the Central Party Committee). The Northwest Steering Committee is an agency of the Party and the Government that is in charge of steering the socio-economic development, national security and defense for the NMMA, including the tourism development. In fact, the Steering Committee only gives consultancy for Central and Governmental agencies, orients and instructs ministerial, sectorial and provincial agencies to implement rather than directly manages and organizes the implementation. Although many agencies involve in directing and steering the implementation of the master plan for tourism development of the NMMA, no agency is directly in charge of the implementation.

*“The most difficult task at present is the organizational planning management. The Northwest has a steering committee that provides general steering rather a management division specific to the plan. Therefore, even when the regional plan has been made available, the management authorities at localities keep following their own ways.”* (Interview with an official of the Drafting Team).



The approving level is another issue to be taken into account when considering the enforceability of the Planning. For inter-provincial tourism plannings and for the joint-sectorial characteristic of the tourism sector, it is necessary that the Prime Minister is the one who approves and announces the planning to enhance the enforceability of the planning.

*“If the planning is approved by the ministry, its enforceability may be weakened. The planning for Ban Gioc waterfall has been enforced in a completely different way because it has been approved by the Prime Minister. The planning 2008 would also have been enforced differently if it had been approved by the Prime Minister. At present, it is only considered as a legal basis.”* (Interview with an official of the Drafting Team).

### **2.3. Discussion questions**

8. Where does the planning idea come from?
9. What subjects are related to the formation of this planning?
10. What subjects are involved in the planning formulation (drafting, developing contents, approving)? Give comments on the drafting and promulgation of the planning? What are the strengths and limitations of this process?
11. What subjects are involved in the implementation of the Planning? Give assessment on the strengths and limitations during the planning implementation. Based on the information obtained from the case, please state the causes of those limitations?
12. Give assessment on the participation and roles of stakeholders involved in the policy-making process (formulating and implementing of the planning). How does their participation have influence on the formation and implementation of the planning?

13. Please relate the formulation and implementation of the planning with the theory on Policy process that have been learned to point out their fundamental limitations and suggest solutions to overcome.

### **Case study 3:**

## **EMPOWERMENT FOR PUBLIC SERVICE DELIVERY UNITS: GRADUALLY TRANSFORMING THE OPERATION OF PUBLIC SERVICE DELIVERY UNITS TOWARD THE MARKET ORIENTATION**

Empowerment for **Public Service Delivery Units (PSDUs)** is a great renovation which has gone through many stages and is still in the process of completion. Those stages are marked by various policy decisions (decrees). The renovation process follows the development stages of the policy, including: (i) Stage 1: Focusing on strengthening the financial mechanism (through Decree No. 10); Stage 2: More adequately empowering Public Service Delivery Units so that they can be autonomous in their own personnel and profession (through Decree No. 43); and Stage 3: Step by step applying market price into public services (Decree No. 16)

### ***I. FIRST STAGE: APPLYING FINANCIAL MECHANISM TO REVENUE RAISING PUBLIC SERVICE DELIVERY UNITS***

#### ***1. Context***

Public service delivery units (PSDUs) in Vietnam are perceived *as units which are established by the State to implement tasks assigned by the State and provide services in health, education, culture, information, preservation, museum, science and technology, sports, natural resource management, environment, meteorology, hydrology...sectors*. From the above concept, PSDUs can be identified through following typical characteristics:

- These units are established and managed by the State Agencies and

- belong to the State's ownership.
- They implement tasks assigned by the State Agencies in the sectors of health, education, culture, information, preservation, museum, science and technology, sports, natural resource management, environment, meteorology, hydrology, economic services, etc.
  - Their main operation budget is provided by the State Budget and they are allowed to collect charges and fees (which are revenues of the State budget) and keep for use in accordance with regulations of the State.
  - They implement expenditure tasks for redistribution purposes via the State Budget and financial funds (such as social insurance fund, health insurance fund, fund for hunger eradication and poverty reduction, etc.).
  - They do not perform the State management functions (for distinguishing with State-management agencies) and do not comprise of national security and defense units.

With this conception, in the subsidy period (prior to 1990), the operation of PSDUs were basically entirely funded by the State Budget. People got healthcare free of charges; students did not have to pay tuition fees; tickets for watching movies, music & art performances were distributed to State agencies for being granted to cadres, officials and public servants, and the audience did not have to pay, etc. Some units were allowed to deliver services by selling tickets, but prices and quantity of delivered services were managed by the State and were allocated by plans.

Every year, based on the planned targets of the assigned tasks (which are basically input indicators such as number of students, number of people to get healthcare, number of sickbeds, number of scientific topics, spending on procurement and repair of assets & equipment, etc.), and based on the expenditure norms prescribed by the State, PSDUs are responsible for

preparing State Budget's expenditure estimates to submit to their governing body for approval and granting in accordance with the assigned plan. All PSDUs and administrative agencies used the same State Budget allocation mechanism called the budget granting mechanism, that was actually the "ask-give" mechanism.

*Previously, in the subsidy period, the financial agencies gave while the spending units asked. Asked-gave what? Asked the payroll, gave the norms in accordance with the payroll, which would be then multiplied by the payroll to obtain the budget. The Ministry of Finance had no specific basis for calculating the norms, so the determination of these norms was quite arbitrary, causing irritation to spending units.*

(A member of Decree No. 10 Drafting Team)

Since the economy was transformed to be operated under the market mechanism, the above-mentioned budget allocation has exposed a lot of shortcomings. Firstly, in terms of PSDUs, as the budget is allocated in accordance with each of the predetermined spending items, they are not allowed to spend the remaining budget of one item of which budget has not been used up for another item of which budget is insufficient. This leads to the fact that the units have to continuously asked the financial management agencies (Ministry/Department of Finance) to allow them to adjust the budget estimates (adjust among the spending items). Therefore, the financial management agencies mainly focus on the approval and adjustment of budget estimates rather than focus on their main duties of controlling and managing the expenditures.

Secondly, the financial management agencies also recognize that the management of the State-management agencies and PSDUs with the same allocation mechanism is unreasonable because the types of services provided by them are different in nature. While the services provided by the State administrative agencies are mainly pure public goods and have no

transaction markets (therefore, they are completely dependent on the State Budget), the public services provided by PSDUs have clear supply-demand markets. Therefore, the main source of income for these units must be paid by the service users rather than depend on the State Budget as before.

Thirdly, the budget granting mechanism makes PSDUs passive and have no motivation to improve their service quality. On one hand, most of the PSDUs are given a small amount of budget at the beginning of a year and have to wait till the end of the year when the budget balance becomes clear for their requests of budget estimate adjustment to be accepted. This makes PSDUs try to spend all at the end of the year (running for spending the budget) if they do not want to return the unspent amount to the state budget and their next year budget to be cut with a respective amount. On the other hand, as the operations of PSDUs are constrained by a system of norms, so they do not need and also cannot improve their service quality. For example, a university that is constrained with the enrollment target, tuition fee, etc. will not have budget to buy more modern equipment to serve the teaching or invest in improving the quality of textbooks and learning materials. Even for trying to improve the teaching quality, the university cannot be allowed to collect higher tuition fee or increase the income of teachers.

Finally, with the perception that public services are those provided by the State, they have generally become an exclusive playground of PSDUs without any competition with the private service providers. This makes them have no motivation to improve their service quality.

Being well-aware of the shortcomings of the ask-give financial mechanism, leaders of the Ministry of Finance – especially leaders of the Department of Administrative Sectors' Finance – have given it a lot of thought and tried to find out a reasonable solution for this problem. A big opportunity came to the Department when the Ministry of Finance received

supports from many technical assistance projects of sponsors, thanks to which leaders of the Department had chance to participate in study tours and learn from the international experience of France, the United States, New Zealand or Korea Republic. The questions like “*Why in Singapore or the U.S. public service delivery units are entitled to spend hundreds of billions dollar without the approval of the Ministries of Finance, while Vietnam’s financial agencies manage each VND, but the operation efficiency of these units remain low?*” (A member of the Drafting Team) have crossed the minds of the Department’s leaders for many times. The expectation for renovation of the Department of Administrative Sectors’ Finance received the support from the highest leader of the Ministry of Finance – Minister Nguyen Sinh Hung at that time.

*- You can do whatever you want, but you have to give me a new mechanism for these public service units.*

*- On your birthday occasion, other people may give you presents or wine, but I will give you a decree on these units.*

(Member of the Drafting Team)

## 2. Policy content and process

### 2.1. Content

**Table 1: Basic content of Decree No. 10/2002/ND-CP**

New content	Details
Application object	<ul style="list-style-type: none"> <li>- Revenue raising public service delivery units that cover the entire costs of regular activities by themselves (public service units that cover costs by themselves) and</li> <li>- Revenue raising public service delivery units that cover part of the costs of regular activities by themselves</li> </ul>

	(public service units that cover part of the costs by themselves).
Use of financial resources	<p>Be provided stable budget estimates for regular activities for 3 years</p> <p>Be annually increased the budget estimate at the rate decided by the Prime Minister.</p> <p>Within the provided budget, the units are allowed to actively allocate to perform their tasks.</p>
Management, use of assets	<ul style="list-style-type: none"> <li>- Depreciate fixed assets as State enterprises.</li> <li>- The amount of depreciation and liquidation of assets that belongs to the state budget is allowed to be kept for the investment .</li> </ul>
Management of expenditure	The units build their own internal spending rules to implement the expenditure.
Payroll	<ul style="list-style-type: none"> <li>- Be proactive to use the payroll assigned by competent authorities; arrange and manage labor matching functions and tasks of the unit.</li> <li>- Be allowed to implement labor contract regime.</li> </ul>
Salary, wage	<ul style="list-style-type: none"> <li>- For revenue raising public service delivery units that cover costs by themselves, it is determined that the total salary/wage fund can increase no more than 2.5 times;</li> <li>- For revenue raising public service delivery units that cover part of the costs by themselves, the total salary/wage fund can increase no more than 2 times.</li> <li>- Pay salaries and wages based on the work quality and efficiency.</li> </ul>
Unspent remaining budget	Be carried over to the next year for operation

*Source:* Extracted from the Decree No. 10/2002/ND-CP

## **2.2. Process**

At the first stage of the policy cycle - problem identification stage - the idea of a new financial mechanism for PSDUs was initiated by the leadership of the Ministry of Finance to address the inadequacies of the old model and adapt to the practical demand.

Decree No. 10 has created strong incentives to PSDUs to expand their services for customer groups who have the ability of payment and reduce spending from the State Budget. However, it was not easy to get this Decree issued, it was the result of persistent persuasion and determination of leaders of Department of Administrative Sectors' Finance under Ministry of Finance.

At the beginning of 2002, the concept of public service delivery remained unacceptable. Many leaders, even in the Ministry of Finance, were not aware of the distinction between administrative agencies and public service units. So, the Department of Administrative Sectors' Finance had to discuss, present, and even argue strongly in order to “just add a hyphen or comma between two terms of Administrative and Public service”:

*During the meeting, I could not stop myself from raising hand, taking a pen and asking for making a presentation. Then, I stepped up to the podium under the witness of 6 Ministers and Deputy Ministers. I divided the board into 02 parts, one for administrative agency, and the other for public service unit. Then, I presented the differences between them and proposed that the administrative agency should be given cost norms while the public service unit should be given financial autonomy. I also emphasized that “In the name of Department of Administrative Public Service (or called Department of Administrative Sectors' Finance), there should be a dash or comma between two terms administrative and public service in order to*



*differentiate the two types of organization.”*

(A member of the Drafting Team)

*Basically, the Department fended for itself. We often joked that the Minister took care of revenues, the Deputy Ministers took care of expenditures, not many people cared about policy formulation.*

(Member of the Drafting Team)

Due to the fact that contractual norms for PSDU depended firstly on the assigned payroll, the Decree No. 10 could not be implemented without the involvement of Ministry of Internal Affairs. However, at that time, Ministry of Internal Affairs insisted that Decree No. 10 was about financial regime that had nothing relating to their duties of organizing the apparatus and personnel. This perception was not much surprising. In terms of financial authorities who had been familiar with the input control regime, it was a common sense that they got afraid of state money losing once the money came out of the Ministry of Finance in case the regime would be changed to autonomy regime that was the first step for management based on operations. In terms of other Ministries (including Ministry of Internal Affairs and Ministries in charge of specific sectors) kept thinking that “Each Ministry does its own business”, without the awareness of the importance of inter-ministerial coordination in major issues that have great influence on various components of the state apparatus such as PSDUs. Leaders of Department of Administrative Sectors’ Finance made many business contacts with the Ministry of Internal Affairs, both officially and unofficially, to convince them to support the new financial mechanism. Besides, it was also required to gain the support of the Government Office and the Ministry of Finance leaders:

*The days preparing the Decree No.10 were very hard, we had to work late and get up early to prepare it. Every few days we had to visit the*

*Government Office to explain for and persuade the leaders. When the Decree was about to be issued, I still cooled my heels in the Office for signature of the Prime Minister on approving the issuance of the Decree. My other colleagues were then waiting at the Department so that if I lacked any information they could provide immediately. Without the consensus and support of the whole Department, I could not have got the Decree No. 10 issued.*

(Member of the Drafting Team)

The construction of Decree No. 10 was the combination of both official and non-official channels (advocacy, persuasion, earning the influence of involved parties, etc.), in that was mainly carried out by the Department of Administrative Sectors' Finance under the Ministry of Finance, who initiated the policy..

Regarding the official channels, a Drafting Team was established with the Head of Department of Administrative Sectors' Finance under the Ministry of Finance as the leader. The draft was then sent for comments and feedbacks of the stakeholders, primarily within the Ministry of Finance. After many times of revision, when the content was quite complete, the Team asked to organize a workshop to consult more widely, including the Finance Departments of ministries and the Finance Departments of provinces. In addition, the opinions of PSDUs were also collected through various forms such as regional workshops, or by sending the draft to each unit for comments or feedbacks in writing.

*There were so many times of revision that the versions should be measured by weight or height of their stack. There were a lot of opposite opinions, many of which came from the local interests of agencies or units. We had to be very patient to be able to calmly acknowledge and filter out irrelevant opinions.*

(Member of the Drafting Team)

After many times of modification and taking official written feedbacks, the Ministry of Finance set date to work with the Government Office. In these meetings, once again, leaders of Department of Administrative Sectors' Finance had to explain each point and idea in the Decree. It was not until the Departments under the Government Office accepted the Decree that it was submitted to Prime Minister for approval.

Also, beside such official channels in the policy-making process, leaders of Department of Administrative Sectors' Finance were well aware that this was a new financial regime that would not be easily acknowledged by stakeholders immediately. Therefore, the Department actively took the opportunity to meet, discuss and explain through official meetings, seminars or on the sidelines of workshops, etc. As analyzed above, for its impartial and practical nature, the Decree No. 10 was agreed by key related parties and lastly was approved.

The way to implement the Decree No. 10 was similar to other policies of the Party and State. After being approved by the Government, the Decree was disseminated. The Ministry of Finance proposed the managing ministries to organize sessions for specialists of Department of Administrative Sectors' Finance to give lectures and answer questions. In addition, the Department worked with the National Academy of Public Administration to organize courses for senior officials in provinces in order to disseminate the policy to them.

The Decree No. 10 is really a step forward in "untying" the financial mechanism for PSDUs. The PSDUs have been empowered to generate revenue to (i) self-manage their collection and spending activities; (ii) exploit new revenue sources; (iii) rearrange the labor force; (iv) adjust salaries and wages of employees to create more motivation for them. The

Ministry of Finance has mainly monitored the implementation of this Decree based on administrative reports of ministries and localities. No assessment or monitoring system has specifically been designed to monitor the implementation process of this Decree. As such, there is almost no scientific research to provide objective evidence on the results of the implementation of this Decree.

Although there has been no systematic and objective assessment on the impact of this Decree, thanks to discrete evidences from some in-depth researches in the field of typical public services such as health, education, it can be seen that this Decree has initially created positive changes in PSDUs.

*For example, Hanoi Saint Paul Hospital (with 460 hospital beds) has implemented the Decree No.10 since the end of 2002. Although the state budget allocation for the hospital has not changed since 2001, the hospital's revenue increased by VND 27 billion (86%) in two years. Part of this increase (approximately VND 4 billion) was from increased normal hospital's fee and from payment amount of health insurance (HI), the rest was due to increase of 350% revenue from the special services, accounting for over half of total revenue of the entire hospital in 2003.*

*These special services were provided on demand and with a much higher quality than the normal services of the hospital... The investments necessary for the hospital's preparation to offer these special services were mobilized from various sources, such as from the contribution of the hospital employees and other individuals, from the revenue of the hospital, from ODA and investment funds from the state budget.*

*...Binh Duong General Hospital (with 600 hospital beds) also significantly increased its revenue within the first year of implementing the Decree No. 10...The percentage of inpatients increased by 15% compared to 2002, while the average length of hospital stay decreased by 6% and the rate of move in increased from 5.35% to 6.23%. In 2003, the average wage of*

*hospital employees increased by about VND 485,000/month (about USD 31). As reported by the Hospital Board of Management, the hospital is currently operating more efficiently thanks to the Decree No.10...*

*Source: Quoted from Box 12.1, Report of Overall Assessment on Public Expenditure in 2004, Volume 2, Page 80*

In respect of educational area, although there is little data on educational and financial targets of training institutions to make assessment on the significance of Decree No.10 to the situation of admissions, revenues from tuition and other contributions including those from the State Budget to these institutions, to the extent that schools can exploit additional revenue sources under the Decree No.10, these sources shall help public schools not only improve the quality of teaching by purchasing additional equipment and media for teaching aid, but also improve teachers' ethics as they feel assured with higher salary. Allowing public schools to self-control their human resources also creates favorable conditions for them to enhance the quality of human resources as they can recruit by themselves rather than having to get teachers appointed by the superiors.

Beside the positive points, Decree No.10 poses risks to the supply of services. Firstly, the ability to generate additional revenue and improve service quality depends greatly on the location, type and level of service provided. For example, hospitals in poor areas will have less ability to generate large revenues than those in rich areas. The growing dependence on revenues from hospital fees will exacerbate the differences in the quality of health services between areas. In addition, services with their nature of public goods such as preventive healthcare, dissemination and education of common knowledge will tend to be dominated by services generating revenues. If the allocation of the State Budget is not readjusted between areas, this may lead to the formation of two systems of public service delivery: One is for rich people/areas with higher service quality and service

fees, and one is for the poor people/areas.

Secondly, Decree No. 10 may lead to the “skimming” of customers, which is particularly serious in the health sector. Revenue generating hospitals tend to receive patients with mild disease and money, and transfer patients with serious disease to other hospitals, usually higher-rank hospitals.

Consequently, serious patients will have less opportunity to access services.

Thirdly, the provision of excessive services for extra revenue may erode the efficiency and equity of service supply. Finally, the socialization of public services has a risk of escalating service cost, making PSDUs move towards serving customers with high affordability, which causes the preferences that the State gives to PSDUs to be actually used for this customer group.

The concerns about the negative impacts of Decree No. 10 on the ability to access to public services of normal people and the inadequacies in the implementation of this Decree (to be discussed as below) have led to the replacement of Decree No. 10 by a new decree that is Decree No. 43/2006 /ND-CP providing the right of autonomy and self-responsibility for task performance, organizational apparatus, payroll and finance of PSDUs.

## **II. THE SECOND STAGE: MORE AUTONOMY FOR PUBLIC SERVICE DELIVERY UNITS**

### ***1. The context***

Over 3 years of implementation of Decree No. 10 (2002-2004), the reports of ministries, departments and localities have shown that: 37 out of 42 central ministries and agencies, and 52 out of 64 provinces and cities have empowered financial autonomy to more than 5,900 out of 13,862 PSDUs, accounting for 42.4%. Specifically, 530 PSDUs of line ministries (accounting for 78%) and 4,430 PSDUs in localities (accounting for 40%) have been empowered the autonomy under Decree No. 10. The sectors which have the most PSDUs empowered with autonomy include education

(212 units), science (97 units), and information culture (75 units). The empowerment in the health sector is relatively slower, and as of the moment there are only 28 medical units that have implemented Decree No. 10. There are 6 ministries that have not empowered the autonomy and 12 cities that have not reported the results of implementation of Decree 10<sup>3</sup>.

According to the Ministry of Finance's report, Decree No. 10 has brought about the positive results as follows:

Firstly, types of public services have been expanded. In education, the schools have opened many forms of formal education, non-formal education, centralized training, distance education, joint training with foreign countries, etc. The hospitals and healthcare centers have organized forms of outpatient and inpatient medical care, and medical care on demand or provided family doctors, etc. The scientific service delivery units have also deployed many researches under the contract with domestic and foreign customers, developed forms of consultation, technology transfer to bring the research results into production, etc.

Secondly, the financial autonomy has been strengthened. The PSDUs have actively exploited the revenues from service delivery, actively used the assigned budget under the job requirement and ensured effective spending and saving. Thus, the financial situation of these units had significant improvement; specifically:

- In terms of the active exploitation of revenue sources: For PSDUs managed by ministries, the revenue from service delivery in 2002 reached VND 2,654 billion, increasing by 73% compared to 2001 (when the autonomy regime was not yet implemented). Of this revenue, the amount collected from fees and charges increased by 37.7%, from service activities

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<sup>3</sup> According to the submission for Government's approval on decree 43 by Ministry of finance (Submission for approval No. 25/TTr-BTC dated on March 9, 2005).

increased by 53.3%. In 2003, the revenue from service delivery reached VND 3,270 billion, increasing by 23.2% compared to 2002. Of this revenue, the amount collected from fees and charges increased by 24.5%, and from service activities increased by 21.5%. For PSDUs managed by local authorities, the revenue of 1266 units was VND 372 billion, increasing by 20.4% compared to 2001. The corresponding figure in 2003 was VND 482 billion, increasing by 29.6%. The noteworthy point was that these increases were due to diversifying the types of delivery services rather than increasing fees or charges.

- In terms of the autonomy of the allocated budget: The stable amount of allocated budget over 3 years enabled the units to foresee this financial source, so they could initiatively plan to use it and overcome the “running to spend all” condition before. Besides, the unexpected tasks assigned by the state every year were accompanied with the additional funding. The state budget for public service delivery investment increased by 15.5% in 2002, by 18% in 2003, and by 18.8% in 2004 compared to the previous year.

- In terms of salary and income increase: The PSDUs succeeded in generating more revenue to increase income for their employees (though in different degrees) by expanding the supply of chargeable services and saving. Thus, the average income increase in these units is 10-15 percent. Especially, some units achieved an income increase by 2-2.5 times of the salary fund by rank or position.

- Creating resources for salary reform: In 2003, the State implemented salary reform. When the State decided to raise the minimum salary from VND 210,000/month to VND 290,000/month, the necessary fund to implement the new salary regime for PSDUs under the central management only was expected to be VND 361 billion. However, these PSDUs had already created themselves the resources of VND 336.4 billion



(equivalent to 93.2 percent). So, the state budget had to add VND 24.6 billion only.

Thirdly, Decree No.10 helped to clearly define functions and duties of administrative bodies and PSDUs, changing the management practice applied to PSDUs. The administrative bodies gradually phased out the deep intervention into the internal operations of PSDUs.

Besides these advantages, the implementation of Decree No. 10 still emerged a series of shortcomings that led to the fact that only PSDUs with many advantages in revenue generating had positive response to it, while a very big part of PSDUs, particularly those under local management did not keen to follow Decree No. 10 and sought ways to delay the implementation of this Decree. Moreover, the PSDUs who had already implemented Decree No. 10 also frequently complained that financial autonomy empowered is a mere formality. In fact, because the management policy documents for these units had not been adjusted in time and synchronously, the implementation encountered many contradictions and problems, heavily depending on the inconsistent and arbitrary application of the management agencies.

All of the mentioned above problems raised a requirement that the Ministry of Finance quickly replace Decree No. 10 by a new autonomy mechanism that should be more comprehensive and suitable to put the operational quality of PSDUs up to a higher level. This was the context that the Decree No. 43/2006/ND-CP was born.

## ***2. Content and procedure***

### ***2.1. Content***

**Table2: Basically new points in Decree 43/ND-CP dated 25 April 2006 about PSDUs' autonomy, responsibilities for task implementation, apparatus, staff quota and finance**

No	Issue	Key adjustments
1	Adjusted object	<p>Applied to all PSDUs (not only revenue-generating PSDUs) and categorized into 3 groups:</p> <ul style="list-style-type: none"> <li>- Group I: PSDUs themselves manage regular operating fee (revenue-generating PSDUs themselves manage their payment)</li> <li>- Group II: PSDUs themselves manage a part of regular operating fee</li> <li>- Group III: PSDUs without public services' income or with low income, then, funded by the state budget to ensure regular operating fee</li> </ul>
2	PSDUs' budget	<p>Categorized in to two groups:</p> <ul style="list-style-type: none"> <li>- Granted autonomy budget: ensuring operation based on function, mission assigned by the authorities; including regular state budget (except for Group 1) and left public service income</li> <li>- Non-granted autonomy budget: the state budget to carry out assigned tasks</li> </ul>
3	Assigned autonomy rights	<p>PSDUs are assigned with the following autonomy rights. Level of autonomy depends on PSDUs' various groups:</p> <ul style="list-style-type: none"> <li>- Specialized autonomy: Self-identifying missions, building up plan and operating.</li> <li>- Apparatus autonomy organization: Establishing, merging and dis-integrating belonging public entities.</li> <li>- Staff quota autonomy:             <ul style="list-style-type: none"> <li>○ Group I self-decide quota</li> <li>○ Group II and group III: the belonging units send annual quota plan to the managing authorities for their approval. Public service entities are allowed to sign</li> </ul> </li> </ul>

		<p>contracts according to the current law.</p> <ul style="list-style-type: none"> <li>- Finance autonomy:             <ul style="list-style-type: none"> <li>○ PSDUs are allowed to decide a number of managing fees, specialized activity spendings, amount of fee based on state regulation.</li> <li>○ All entities need to build up internal income and outcome regulations and send it to the state treasury and governing authorities for their investigation and control.</li> <li>○ PSDUs can mobilize external capital besides the state budget to expand and enhance service quality. In terms of expanded services, they can decide income and the rate of fee.</li> <li>○ Directors of PSDUs can allocate outcome for each belonging unit; they can decide investments into constructing, buying and repairing facilities.</li> </ul> </li> </ul>
4	Salary budget and payment rate	<ul style="list-style-type: none"> <li>- Group I: is allowed to decide total income per year for staff (there is no limitation on maximum rate)</li> <li>- Group II: is allowed to decide total income per year for staff, the maximum rate is no more than 3 times of position and level's annual salary stated by the Government.</li> <li>- Group III: is allowed to identify total annual spending on staff's salary, the maximum rate is no more than 2 times of position and level's annual salary stated by the Government.</li> </ul> <p>Paying for each worker is decided by managers, which is based on the internal income and outcome regulations (<i>there is no limitation on maximum rate</i>).</p>

5	Extracted budget formation	PSDUs are allowed to extract budget forming the followings: - Group I and group II: public activities development budget, rewarding budget, welfare budget, stable income provision. - Group III: budget on facility improvement, rewarding, welfare, stable income provision.
6	Criteria on task completion level	Minister, chairman of local peoples committee have to regulate criteria on evaluating the volume of annual task completion, quality of task completion or approved tasks, time of completion, status of mechanism following, policies and regulations on finance.

*Source:* Extracted contents of Decree No. 43/2006/ND-CP

Decree No. 43 is highly open and has empowered units to be autonomous from personnel, apparatus to financial revenue and expenditure to ensure the task completion with the highest quality and efficiency. However, the observation on the implementation of Decree No. 43 shows that PSDUs still have not been empowered adequately; therefore, they have not been really motivated to reach a better autonomy. Besides, during their course of operations, many units have become joint-venture and associated to expand the delivery of public services, but relevant adjustments have not been timely made in legal documents. Especially, in the trend of gradually shifting from the mechanism in which the State directly delivers public services into the mechanism in which the State buys output products from PSDUs, PSDUs have to sufficiently calculate the price of public services to sign contracts with the State. Nonetheless, Decree No. 43 is not included with regulations on calculating price of public services, so some public service products are still subject to a pricing policy in which the service price is lower than its production cost. This hinders these units from shifting to a completely autonomous model like enterprises. It is a new requirement

from the reality, which is suitable with the comprehensive renovation roadmap for the public service sector in the spirit of the master program on State administration reform in 2011-2020 period in accordance with the Resolution No. 30c/NQ-CP of the Government dated 8 November 2011.

## **2.2. Procedure**

Although Decree No. 10 was considered as more advanced compared to the existing mechanism, the number of PSDUs that responded to it was still small and even these units also thought that the Decree No. 10 did not really free them from burden.

Through the feedbacks of PSDUs that implemented the Decree No. 10, the Ministry of Finance realized that the Decree No. 10 just prescribed the financial autonomy mechanism; meanwhile, the autonomy regarding organizational task implementation, apparatus arrangement, regular personnel and labor force had not yet been specified. All theories on public management have pointed out that a unit can only be completely autonomous when it is empowered in all the three aspects: (i) finance; (ii) profession (organizational task implementation) and (iii) apparatus and personnel. In reality, all the three aspects interact with each other. Therefore, if the financial autonomy is handed over while the other aspects remain under tight control, the financial autonomy will be a mere formality.

*The health sector implemented the Decree No. 10 later than other sectors. Possibly because the influence of the health sector on the society is very sensitive, the Ministry of Health may find it better to be prudent. By the end of the implementation period of the Decree No. 10, the Ministry of Health had just implemented it cautiously in some hospitals. The application of the Decree No. 10 enabled them to eliminate the practice of managing finance based on spending items. However, in fact, the Decree No. 10 did create much more autonomy*

*for hospitals because the opening of new healthcare services to raise income at that time was still under strict control.*

(An official of Finance Department, Ministry of Health)

Regarding PSDUs, the Decree No. 10 just prescribed a financial autonomy mechanism for revenue-generating PSDUs. However, it was exactly the same like the warnings of a number of researches, the increase in revenue was not even among PSDUs, and mainly concentrated on PSDUs with advantages of supplying services to the society such as universities, colleges, vocational training schools, big science institutes or central hospitals. Therefore, these units with high revenue strongly responded to the transformation to the new financial management mechanism.

Meanwhile, PSDUs with low or inconsiderable revenue did not expect the transformation stated in the Decree No. 10 as they concerned that the allocated State Budget might be reduced, and the low generated revenue could not cover the target of increasing income for their employees. In addition, a large number of non-revenue-generating PSDUs (accounting for over 80% of the total PSDUs) kept following the old mechanism.

Besides, as the Decree No. 10 regulates that when the State makes decision on increasing salary for civil servants, PSDUs shall cover the increased salary amount by themselves. This regulation made PSDUs reluctant to the new mechanism because they were afraid of being unable to generate enough revenue to offset the total increased salary amount. Meanwhile, the cutback of personnel in these PSDUs was very difficult because they had not yet been enabled to be autonomous in making decisions on the organizational structure and personnel. In the salary reform in 2003, the State Budget still had to aid to pay added salaries for PSDUs that could not cover the increased amount in accordance with the regulations.

Regarding the State management agencies, the management psychology of “tight control” to assert power remained strong, resulting in the fact that they were not active to adjust their policies and mechanisms to fit the Decree No. 10. For example, while the Decree No. 10 allowed leaders of PSDUs to be autonomous in making decisions on expenditures within the units, the Decree No. 60/2003-ND-CP detailing and guiding the implementation of the Law on the State Budget required that those decisions must be accepted by senior management authorities. This regulation aimed to ensure the checking and inspection roles of the senior management authorities, but restricted the autonomy of PSDUs.

Similarly, many professional management documents of governing ministries on labor standards and norms (the number of doctors, sickbeds, number of teachers/classes, etc.), economic & technical norms of businesses, organizational apparatus, etc. were no longer appropriate. Some documents guiding the content and amount of fees and charges were too outdated, so PSDUs couldnot be active in adjusting their expenditures or generating considerable income sources to invest in upgrading infrastructure, and enhancing service quality. For example, the medical service fee schedule of the Health Sector was promulgated in 1995 and has not been adjusted, even for inflation.

*Decree No. 03/ND-CP/2003 of the Government on salary adjustments prescribes that units are allowed to use 35% of their retained revenue (a part of hospital fees and health insurance) as the fund for increasing salaries while the Decree No. 95/ND-CP/1995 providing policies on using hospital fees allows hospitals to extract only 30% of the revenue from part of hospital fees to use as the fund for bonuses for medical officials and remains in effect. So, which one should we follow?*

(An official of Financial Department, Ministry of Health)

In 2006, the policy making process in Vietnam was prescribed more methodically. The formulation of a new decree – Decree No. 43/ND-CP *providing the autonomy and self-responsibility for task performance, organizational apparatus, personnel and finance of Public Service Delivery Units* basically complied with the official procedures as prescribed in the Law on the Promulgation of Legal Documents 1996, which were amended and supplemented in accordance with the Law on amending and supplementing a number of articles of the Law on the Promulgation of Legal Documents in 2002. Specifically, the Government issued a decision on establishing the Drafting Team (in which the Deputy Minister of Finance was the leader and deputy ministers of other involved ministries were members). The Ministry of Finance established a Decree Editing Team of which the core was experts from the Department of Administrative Sectors' Finance. As a standing agency, the Ministry of Finance organized assessments on achievements and limitations in the deployment of the Decree No. 10. At the same time, the viewpoints and orientations of the Party and the State in reforming the public sector were considered as the basis for overcoming the limitations. The main assessment forms at this time were through working delegations of the Ministry of Finance assigned to work with other ministries and localities, or requiring involved stakeholders to submit reports on the implementation of the Decree No. 10 under their management scope.

After summarizing and classifying feedbacks, the Editing Team prepared the first draft decree. This draft was then consulted within the Editing Team and Drafting Team before being widely consulted with ministries. During the editing process of the decree, if there might be any big change, it must be referred to the Drafting Team for feedback and reported to the Minister of Finance for explanation.



*The preparation of the draft decree is mainly under the responsibility of experts at the Department of Administrative Sectors' Finance, Ministry of Finance. Other stakeholders do not directly participate in the drafting process, but only contribute opinions.*

(Member of the Drafting Team)

After experiencing many consulting and editing rounds, before being submitted to the Government, the draft Decree No. 43 was appraised and checked for its legality by the Legal Department under the Ministry of Finance. Afterward, the Minister of Finance forwarded it to the Ministry of Justice for appraisal. The appraisal records included one proposal on the draft decree to the Government, the draft decree, a summary of opinions and comments of involved stakeholders and an explanatory report on opinion acknowledgement of the Ministry of Finance. The Ministry of Justice then forwarded a written appraisal to the Government prior to the Government's meeting for the Decree approval.

The final step of this procedure happened at the meeting of the Government. Ministry of Finance, Ministry of Justice and involved ministries were invited to present issues regarding the contents of the Decree, appraisal opinions and opinions of involved parties. The Government's members then discussed and voted for approval of the Decree. On that basis, the Prime Minister officially signed to issue the Decree No. 43/ND-CP on 25 April 2006.

*The Decree No. 43 is just the extension of the Decree No. 10, so there is no sensitive matter. We just followed the procedure prescribed by the law to make it.*

Discussion with the former Director of the Department of Administrative Sectors' Finance in the period of drafting the Decree No. 43.

New basic points of the Decree No. 43 compared to the Decree No. 10 are summarized in the following table.

So, regarding the contents, the Decree No. 43 has given a broader and more adequate autonomy to PSDUs, and taken the distinction among autonomy levels for types of PSDUs into account at the same time. This is also a preparation step to gradually transform PSDUs, especially those in Group I, to the corporate form. More noticeably, this is the first time when the requirement on formulating assessment criteria on task completion has been set out. It also indicates a very obvious change in the awareness of policy-making agencies to gradually shift from the management of inputs into management of output and work performance.

The Decree No. 43 has taken its effect since 2006 after 15 days as from the date of its promulgation. To implement this Decree, the Ministry of Finance has issued the guiding Circular No. 71/2006/TT-BTC dated 9 August 2006; accordingly:

- PSDUs shall make their own plan of autonomy and self-responsibility for the finance to submit to senior authorities, in which an Internal spending regulation must be included. The autonomy plan must be widely consulted and publicized to all employees of the units.
- The governing agencies at central and local levels shall review, appraise the revenue and expenditure estimates as well as the State Budget allocated to ensure regular operations of the units (for those belonging to groups II and III); summarize and submit them to the respective financial management agencies.
- The financial agencies shall review and give written report on the classification of PSDUs and the state budget allocated to ensure the regular operations of the units (for those who self-ensure a part of their operating expenditure and those who receive thorough financial support from the State Budget for all of their activities).

- After the Ministry of Finance's agreement, the governing Ministry shall issue decision on the autonomy and self-responsibility for finance to PSDUs.

In the last year of the budget stabilization period, PSDUs shall make a summary report on their implementation of the autonomy and self-responsibility in finance over three years. On that basis, PSDUs prepares the autonomy and self-responsibility plan for the next stabilization period and submits it to the senior authorities for consideration at the same time with the time for making the State Budget estimates of the planned year.

Regarding the reporting mechanism, POSPs shall annually make report to the senior management authorities about the results of implementing the autonomy and self-responsibility practice prior to 31 January of the following year. Every year, ministries, departments and localities shall organize assessments on the deployment of the Decree No. 43 and submit reports to the Ministry of Finance prior to 25 February of the following year.

In fact, this Decree received more positive responses during its implementation compared to the Decree No. 10.

*The Decree No. 10 was just able to open the windows (i.e. being able to remove the management form based on spending items), rather than opening the doors (i.e. being able to raise income sources for hospitals). Not until the Decree No. 43 could we see a strong impact. Although there is still the abuse of healthcare techniques or over-prescription, it must be accepted that the Decree No. 43 has reduced a heavy burden for the State Budget. Hospitals have more conditions for investing or joint-venturing and associating in the investment into modern facilities. Therefore, the people have been benefited from high technologies.*

(An official of Department of Planning and Finance, Ministry of Health)

The annual reports on the implementation results of the Decree No. 43 from ministries, departments and localities show that PSDUs, when being granted with the autonomy, have actively used the Stage Budget more effectively to implement their tasks; at the same time, they have also used their assets and human resources more proactively to develop and improve the service quality, creating conditions for raising income sources.

The units have formulated their internal spending regulations to enhance the internal management, use resources more effectively, promote public service delivery activities, raise income sources, increase revenue, save costs; therefore, many units have been able to save regular expenditures to make contribution to improving the efficiency of services, offsetting added salaries for employees, and having more capital to invest in upgrading infrastructure, renovating facilities, creating conditions for expanding public service delivery activities and other services of the units. According to an incomplete summary of the Finance Inspectorate under Ministry of Finance (2010), the average rate of self-assuring regular expenditure of PSDUs has reached about 70-80%.

### **III. THIRD STAGE: FORMULATING NEW AUTONOMY MECHANISM FOR PUBLIC SERVICE DELIVERY UNITS**

#### ***1. Context***

According to an incomplete report of the Inspectorate under Ministry of Finance<sup>4</sup>, as of late 2010, on the national scale, ministries and central agencies had granted the autonomy and self-responsibility in finance to 756 PSDUs under their management, in which 173 PSDUs could self-assure their operation expenditure; 484 PSDUs could assure a part; and 99 units

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<sup>4</sup>Ministry of Finance (2010), *Review report of the inspection of financial autonomy in public service delivery units in 2006-2010 period*, Report of Finance Inspectorate under the Ministry of Finance.

were granted with total operating budget by the State Budget. Localities had granted autonomy and self-responsibility in finance for 23,399 PSDUs under their management, in which 219 PSDUs could take care of their own expenditure; 9,868 PSDUs could take care of a part; and 13,312 PSDUs had their total operating expenditures taken care of by the State Budget.

The Decree No. 43 has created many positive changes in the operations of PSDUs. This is firstly shown under the aspect of autonomy in implementing their professional tasks: PSDUs have been active in deciding measures and solutions to perform their professional tasks in accordance with their assigned functions and missions. Typically, in the health sector, the Decree No. 43 allows hospitals to develop many new, high and advanced techniques; gradually reduce overloads; increase the productivity and professional quality; re-plan hospitals to increase the area for disease treatment and diagnosis; increase the number of sickbeds and cut down the area for the administrative division. Hospitals, schools and scientific service delivery units have reformulated their organization and operation rules; re-organized, merged, split, dissolved faculties, departments and member units to meet the practical requirements. Some units even establish budget estimation units under their management so as to account the revenue-expenditure balance by themselves. The better autonomy in recruitment also helps these units select suitable human resources with their needs. The internal organization of units has also been arranged more scientifically. Expert and consultancy activities are promoted to earn more revenue and enhance the prestige for PSDUs. The Decree No. 43 helps units gain more revenue, diversify budget mobilization forms for making investments. For the health sector alone, in 2010-2013 period, 9 units signed loan contracts with the Vietnam Development Banks and the Stimulus Fund with the total capital of up to VND 1,332 billion and were able to repay above VND 526 billion of both principal and interest. Thanks to that, a series of new

hospitals were newly-constructed such as National Institute of Hematology and Blood Transfusion, National Hospital of Odonto - Stomatology, Hue Central Hospital, National ENT Hospital, and some hospitals completed their first phase, including National Hospital of Endocrinology; University Medical Center in HCMC, etc.

Also thanks to the socialization of the investment for the health sector rooted from the Decree No. 43, a series of modern facilities such as hi-tech and high-valued diagnosis and treatment equipment that could not be covered by the State Budget have been equipped through joint-venturing and associating forms. Therefore, the technologies have been developed, diagnosis and treatment quality has been improved, helping change the awareness of PSDUs in the capital mobilization to have facilities to serve the professional activities apart from leaning on the State Budget only.

Finally, the Decree No. 43 has encouraged PSDUs to effectively and economically use funding sources to increase income for their employees and make funds, upgrade the infrastructure and purchase equipment. Many hospitals also have professional development funds to assign their officials to attend training courses on enhancing their profession and expertise.

However, a series of contents prescribed in the Decree No. 43/2006/ND-CP have not had adequate enclosed guiding documents. The empowerment and decentralization mechanism in the autonomy and self-responsibility in implementing tasks, organizing apparatus and personnel of competent agencies has not been clear, more or less causing difficulties for units to sufficiently implement their rights and responsibilities under the spirit of the Decree No. 43/2006/ND-CP. There have not been specific guides on criteria for assessing the task completion for units to rank them. There have not been combined criteria on assessing the results of budget use and task completion after allocating annual budget estimates for units. Therefore, the

results and quality of task implementation of units have not been accurately reflected. These issues will be analyzed in details in the next part.

After being implemented for 9 years, the Decree No. 43 has exposed a number of shortcomings, which make it no longer suitable for the reform of the public service sector.

The Decree No. 43 has just granted the autonomy in the regular operating expenditure, but has not mentioned the spending on investment. In fact, many PSDUs can also be autonomous in the spending on investment. Therefore, the classification of PSDUs needs to take into consideration of units who can be autonomous in both types of spending mentioned above. (Later on, the Decree No. 85/2012/ND-CP dated 15 October 2012 on the operational and financial regimes applicable to public health service delivery units and the prices of medical examination and treatment services of public medical examination and treatment establishments has re-divided PSDUs in the public health sector into four groups).

During their course of operations, some PSDUs both implement tasks assigned by the State and deliver services at the same time, so it is impossible to absolutely separate the salary fund, administration expenses, other expenses, etc. for the two forms of operations. This leads to the fact that the State Budget is possibly required to implicitly subsidize the service delivery activities. Meanwhile, PSDUs do not have to sufficiently and correctly calculate their service delivery expenditures into service prices, resulting in unfair competition among public and private units, and even among PSDUs who receive different subsidies from the State Budget. To date, all public services assigned by the State are considered as social services for non-profit purposes, so the service charges are only collected in accordance with the State's regulations (the service charges are often very low to ensure the accessibility of state-favored subjects). However, the fact that both types of services (social services and market services) are available

has caused difficulties in the collection of charges as nobody knows when they should be collected in accordance with the State's regulations and when they should be collected in accordance with the market prices.

The implementation of the Decree No. 43 also shows that there are very different viewpoints on the autonomy and self-responsibility in finance between PSDUs and governing bodies. From the perspective of PSDUs, they find themselves not yet really freed/untied due to the fact that governing bodies still want to retain their control rights, so they have not assigned further autonomy in other aspects for exactly accordance with the spirit of the Decree No. 43.

*In the high education sector, I realize that the Decree No. 43 has not brought about considerable autonomy for universities. Although the Decree encourages PSDUs to expand more types of services, when universities propose to open more training majors, the Ministry of Education and Training (MOET) does not approve it with the argument that MOET needs to regulate so that the supply does not exceed the demand!!!. Also with the same argument, the Ministry does not agree to allow universities to set enrollment criteria by themselves. Many universities propose to be autonomous in the number of officials and apparatus organization, but the Ministry of Home Affairs does not agree either. Similarly, they cannot exploit their existing spare infrastructure via leasing or joint-venturing forms because it goes against the Vietnam Communist Law, etc. In short, the idea of the Decree is good, but the governing ministries still do not want to empower. Thus, how can the autonomy be obtained?*

(An official in charge of financial-accounting at a University)

This comment is also consensually shared among officials from other policy-making agencies.



*The subsidy mindset remains imbued in our governing ministries. All ministries want to take care and implement all. For example, even when the Decree No. 43 had been promulgated, the Ministry of Home Affairs still gave consultancy on promulgating a separate decree on managing personnel and determining job positions. This clearly goes against the spirit of the Decree No. 43.*

(Former Director of Department of Administrative Sectors' Finance,  
Ministry of Finance)

Through the inspection process at some ministries, the Inspectorate under Ministry of Finance have also pointed out the limitations in the implementation of the Decree 43, which are due to the fact that: (i) Many ministries delay issuing documents guiding the autonomy and self-responsibility for task performance, organization of apparatus and personnel, thereby the practice has not been synchronized with the autonomy and self-responsibility regime in finance; (ii) many economic and technical norms and industry standards that have been outdated, missing or unreasonable have not yet been amended and supplemented; and (iii) the study and formulation of documents prescribing assessment and evaluation criteria on the level of task completion and the quality of public service operations of units who are assigned with the autonomy and self-responsibility have not yet been conducted, restricting the payment based on the level of work completion; and the payment at some units remained on leveled or average basis.

From above shortcomings, the Ministry of Finance clearly finds out that it is necessary to develop management mechanisms and policies for PSDUs with a full financial autonomy to gradually shift towards a full-cost accounting model like enterprises. The State Budget will not cover the procurement of machinery and equipment for units; the payment for duties ordered by the State have covered all costs. While the Decree 43 expects to transform the

operation of PSDUs toward the market-based direction, a series of other existing regulations on the cost frame, hospital fees, service charge accounting method, economic-technical norms, etc. have not yet been timely adjusted accordingly. Consequently, it has not been clearly determined whether the services provided PSDUs will continue to be subsidized by the State (under various forms) or not. This is a problem that pushes the Government to transform the operation of these units into the operating form of enterprises. The State will buy outputs from those units fairly in accordance with the market mechanism to serve its political and social objectives.

## 2. Content and procedure

### 2.1. Content

**Table 5: Basic new features in Decree No. 16/ND-CP/2015 compared to Decree No. 43/ND-CP/2006**

No	Issue	Key adjustments
1	Adjusted object	PSDUs are categorized into 4 groups: <ul style="list-style-type: none"> <li>- Group I: PSDUs themselves manage total investment and regular operating fee.</li> <li>- Group II: PSDUs themselves manage regular operating fee</li> <li>- Group III: PSDUs themselves manage a part of regular operating fee</li> <li>- Group IV: PSDUs funded by the state budget to ensure regular operating fee.</li> </ul>
2	Calculation mechanism for prices of	<ul style="list-style-type: none"> <li>- PSDUs of group I have public service prices calculated in accordance with the market mechanism.</li> <li>- Prices of public services using the State Budget are</li> </ul>

	public services	<p>determined based on economic-technical norms and cost norms under a full cost calculation roadmap.</p> <ul style="list-style-type: none"> <li>- The roadmap for calculating prices of public services using State Budget will be gradually included in service prices.</li> </ul>
3	Assigned autonomy rights	<p>The right to autonomy is assigned in correspondence with the type of PSDUs based on the principle that the more operating fees a unit can manage by itself, the higher autonomy such unit can benefit in order to encourage units to speed up the transformation to a complete autonomy.</p>
4	Method of arranging budget estimate	<p>Change from assigning the State Budget estimate to PSDUs to making orders and assigning service supply tasks based on the economic-technical norm system and quality criteria and standards for each type of public services.</p> <ul style="list-style-type: none"> <li>- Group I and II: The State orders services</li> <li>- Group III: The State orders services in combination with supporting budget from the State Budget</li> <li>- Group IV: Assign budget.</li> </ul>
5	Extracted budget formation	<p>PSDUs are allowed to extract budget for forming the followings:</p> <ul style="list-style-type: none"> <li>- Public activities development budget: The extraction proportion is prescribed for each type of PSDUs</li> <li>- Stable income provision budget is prescribed differently for each type of PSDUs. Group I is allowed to self-decide while group II and group III are restricted with no more than 3 times and 2 times of the scale and rank-based salary budget respectively.</li> </ul>

*Source:* Extracted from the Decree No. 16/2015/ND-CP

Obviously, the Decree No. 16 has formed a very open mechanism for PSDUs that have high financial autonomy ability to gradually shift to operate under the market mechanism. If the Decree No. 10 is considered as “opening the windows”, the Decree No. 43 as “opening the doors”, the Decree No. 16 will be regarded as marking the point where “PSDUs branch out to the world”.

However, to implement the budget estimate allocation to PSDUs in accordance with the output results, ministries and localities need to formulate and complete the economic and technical norm systems and specific criteria for assessing the task completion level; at the same time, pay attention to the observation and assessment on the contract implementation results, especially, the assessment of independent third parties to ensure the objectiveness, transparency so as to enhance the service quality and efficiency of the State Budget spending.

## ***2.2. Procedure***

Similar to the promulgation of the Decree No. 43, that of a new replacement decree (Decree No. 16/ND-CP dated 16 February 2015) also complies with the procedure on promulgating legal documents, that is stated in the Law on promulgation of legal documents 2008 (rather than the Law 2002 at the time of promulgating the Decree No. 43). Compared to the previous Law, the new one is more specific in describing the forms of collecting comments and opinions on the draft Decree and requires the impact assessments in case the policy is promulgated. Regarding the promulgation of the Decree No. 16, the Ministry of Finance has strictly observed the steps in the official procedure on policy promulgation. Nonetheless, the quality of the consultation, collection and summary of opinions from stakeholders as well as policy impact assessment remains limited.

According to Article 62, the Ministry of Finance shall consult other Ministries and subjects who are directly affected by the document, raise matters to be consulted and specify the addresses to receive the contributed opinions. Consulting forms include personal consultation, sending the draft for comments, organizing workshops and posting on website of the Ministry for at least 60 days so that involved agencies, organizations and individuals can contribute opinions.

*Since the Law 2008 took effect, we have always complied with the regulation on posting the whole Decree on the website of the Ministry of Finance and the Governmental e-portal for 60 days so that all the people can contribute opinions and provide comments on it. However, there are no opinions or comments via this channel.*

(Former Director of Department of Administrative Sectors' Finance)

For opinions from political and social organizations which function in giving counter-arguments on policies, the Ministry has also organized many workshops to consult scientists, experts and managers, but the policy drafters find these opinions unspecific, possibly because these consulted people are not those who encounter specific relating situations in reality where the Decree No. 43 is applied.

PSDUs also have opportunities to give out their feedbacks in writing on the draft Decree. These feedbacks will then be summarized by the governing Ministry and forwarded to the Drafting Team of the Ministry of Finance. The process of collecting and summarizing the information at the Ministry of Finance is undertaken by members of the Drafting Team. They have to read and classify opinions to prepare summary report or explanatory report. However, with ten thousands of different opinions, it is unclear about the method that the Drafting Team has used to ensure that no contribution opinions are missed either unintentionally or intentionally.

*I also see that the Ministry of Education and Training sent the draft Decree and official dispatch to universities to ask for written comments and feedbacks. However, almost all universities did not show much interests in the opinion contribution. Basically, when seeing that the draft Decree was about finance, they forwarded it to the financial management departments for opinions. In fact, because the decrees as such are about the autonomy mechanism, they should also have received opinions from other departments that are in charge of profession or personnel.*

Discussion with Head of a Department of Planning and Finance of a  
university

*We find this form of opinion contribution just one-way democratic. We did send the official dispatch on our opinion contribution to the Ministry of Education and Training, but received no feedback. We also did not receive any notification on the quantity of universities participating in the opinion contribution as well as the contributed contents. The form of organizing workshops for units to contribute opinions is rarely conducted, or only conducted at higher level. I feel that they do not make many revisions compared to our proposals.*

Discussion with an official of Department of Planning and Finance of a  
university

Complying with requirements of Law 2008, the Ministry of Finance has also assessed the potential impacts of the promulgation of the new decree. In foreign countries, the policy impact assessment can be made by independent consulting companies or non-governmental organizations specializing in policy review to ensure the scientificity and objectivity of the assessment conclusions. In Vietnam, the policy impact assessment is still made by the agency that is in charge of drafting the policy. The data come mainly from

the internal administrative reports, so the reliability and consistency are not high. This has affected the quality of the policy documents issued.

*In Vietnam, the government often self-makes its assessment on the basis of the data provided by its agencies. A lot of data cannot be collected because they do not meet the requirements of the drafting agency or are simply not available. This assessment presents potential impact of a policy that has not been issued, so it is impossible to have available data. Therefore, the assessment is also superficial, mainly serving the will of the policy writer.*

(Former Director of Department of Administrative Sectors' Finance)

Regarding Decree No.16, after all appraisal steps have been done, the Ministry of Finance prepares a complete dossier for the draft decree to submit it to the Government, which includes: (i) A proposal on the draft decree to be submitted to the Government; (ii) The revised draft decree after collecting opinions of the appraisal bodies and involved individuals, organizations and agencies; (iii) A reconciliation statement on acquiring opinions; (iv) A detailed presentation on the impact assessment of the draft decree; and (v) A summary of opinions and comments of involved agencies, organizations and individuals.

At the governmental level, the Office of the Government convenes a meeting with the participation of representatives from the Ministry of Finance, Ministry of Justice, and the leaders of relevant ministries and departments to review the draft decree once more. Finally, at the meeting of the Government, the Decree has been voted for approval by the majority of the Government members. On 14 February 2015, the Decree No.16 stipulating the autonomy of PSDUs was issued with a number of new points on prescribing prices and ways of calculating public service charges, innovating the method of budget estimate allocation, allowing PSDUs who

can manage investment and regular operating fee by themselves to have further rights to make decisions, etc.

To implement the method of budget estimate allocation for PSDUs based on the outputs, Ministries, departments and localities are required to develop and perfect the system of economic and technical norms and specific criteria for assessing the level of tasks fulfilled as well as pay attention to the monitoring and evaluating of the implementation of contracts, especially the assessment of an independent third party to ensure the objectivity and transparency, in order to improve the service quality and effectiveness of the state expenditure. In this regard, Decree No.16 has not mentioned the additional budget paid to employees based on their quantity, quality and work efficiency. Therefore, the payment of average additional income as in Decree No.43 has not been solved yet.

Calculating the correct and full costs into the prices of services is a sensitive issue that has a great impact on the social life. Therefore, the Government is also aware that the price adjustment of public services should be carried out step by step in the roadmap with caution about the impact of the market price on services, the potential inflation risks resulting in unstable macro-economy as well as the accessibility to essential services with increasingly improved quality of the policy objects. Thus, Decree No.16 has also cautiously considered the proposed roadmap of calculating the market pricing of public services.

*We all clearly understand that it is necessary to include depreciation, taxes, salary, etc. to the price of public services, but we need to do it step by step because of many obstacles. For example, the correct calculation of depreciation is related to the valuation of public property. The calculation of taxes related to the tax administration of the non-profit organizations. My proposal is that the wage costs will have been fully calculated by 2018; the management costs will have*



*been fully calculated by 2020 and all of the costs will have been fully calculated by 2015. In the decree, the speed is faster (all of the costs will have be fully calculated by 2018).*

Discussion with Former Director of Department of Administrative  
Sectors' Finance, Ministry of Finance

The government has also drawn lessons from the fact that the Frame Decree (Decree No.16) has been issued but the relevant ministries and departments have not consulted the Government to promulgate other Decrees on the autonomy regime for PSDUs in each public service sector, resulting in inconsistencies between the legal documents. Thus, the Decree No.16 also clarifies that in the transitional period when there have not been sectoral guidelines, PSDUs shall continue implementing the autonomy under Decree No.43 and the existing Decrees on the autonomy in their domains.

### **3. Discussion questions**

1. Where does the idea on autonomy empowerment policy to PSDUs come from?
2. Which subjects are related to the formation of this policy? Analyze the roles and rights of those subjects.
3. What subjects participate in the policy-making stages (drafting, opinion contribution and approval)? Give comments on the process of policy drafting and promulgation? What are strengths and weaknesses of this process?
4. What subjects participate in the implementation of Decree No. 10 and Decree No. 43? Give comments on strengths and weaknesses in the implementation of these Decrees. From information obtained from the case study, clarify causes of those weaknesses?

5. Relate the process of formulating and implementing policies with the theories on policy process that have been learned to point out fundamental limitations of that process and suggest solutions.

## Case study 4:

### THE EVOLUTION OF HIV POLICY IN VIETNAM<sup>5</sup>.

#### 4.1. Background

Vietnam, with a population of approximately 86 million (1), has a concentrated HIV epidemic, with the highest HIV prevalence among injecting drug users, female sex workers and men who have sex with men (2). The first HIV case was reported in 1990 and the estimated total number of people living with HIV (PLWH) in 2010 was 254,000 (2). Adult HIV prevalence (age 15-49) was estimated at 0.44% (2). As in many countries in Asia (3) and Eastern Europe (4), the HIV epidemic in Vietnam appears to be a consequence of the social context: new drug trafficking routes, internal migration, increasing economic and urban-rural inequalities and the transition from smoking opium to the risky injection of heroin practices (5). Illicit drug use and sex work were not only illegal but also were both officially (in government policy and reports) and unofficially referred to as ‘social evils’ in Vietnam. Since the onset of the HIV epidemic in Vietnam, both drug users and sex workers have been seen as ‘destroying the morale, creating bad effects on society’s culture, public security and contributing to the spread of HIV’ (6). Many of Vietnam’s HIV prevention and control policies during the 1990s and early 2000s were based on mandatory HIV testing and the internment of drug users and sex workers and information campaigns that linked HIV to these heavily stigmatized risk behaviors.

In 2006, the government of Vietnam passed an HIV law that promoted a more rights-based approach to HIV prevention and care, legalizing harm reduction policies like needle and syringe exchange

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<sup>5</sup> Study by Pham Nguyen Ha, Anastasia Pharris, Nguyen Thanh Huong, Nguyen Thi Kim Chuc, Ruairi Brugha and Anna Thorson, *Global Health Action* 2010, 3: 4625 - DOI: 10.3402/gha.v3i0.4625.

programs, and instituting medical insurance policies for PLWH. Vietnam had gone, within the span of 10 years, from being a country with one of the most punitive HIV policies to having a rights-based HIV policy that includes measures that many higher-income countries still struggle with, such as needle exchange and health insurance inclusions.

In the case of Vietnam, as in other social and political contexts with a long history of single party governments such as countries from the former Soviet Union (7) and China (8-10), it is often unclear how policy had been formulated, who had been involved, what the relationships are between different actors and the effects that different policies have on each other (11). While difficulties in programme implementation are often described in the literature or in programme evaluations, they are rarely linked back to the policy-making process. Analyses of the processes of policy change and implementation should consider the roles, views and values of the front-line providers tasked with policy implementation (12, 13).

Although HIV epidemics and consequent responses differ between and within countries, there are important cross-country lessons to share, particularly in terms of national policy processes. In a similar way, lessons from Vietnam may be of use for other settings and states in the region and beyond. This study describes the evolution of HIV policies in Vietnam from the mid-1990s to the late 2000s, focusing on the limited set of actors involved, the influences on them, and the processes that led to policy change. The paper also considers implementation issues, especially barriers due to human resource shortages.

## **4.2. Policy content and policy-making process**

### **4.2.1. Policy content**

#### *AIDS , social evils and forced rehabilitation*

The first phase of Vietnam's AIDS response was characterized by its closely linking HIV prevention and control to what has, in Vietnam, been referred to as 'social evils'. Therefore, campaigns to combat sex work and drug use were judged to be the most logical solutions to reduce the spread of HIV.

Initially, leaders were afraid that revealing the information of this dangerous disease in the province would make the visitors scared. The public was confused about AIDS and social evils. National communication (prevention campaigns) often used the skull and crossbones to indicate AIDS. (Provincial Health Official)

In 1993, the Government issued Resolution No. 05 on sex work control (18), which stated that 'sex work is linked with the AIDS disaster', and therefore prescribed that 'female sex workers should be interned in rehabilitation centres for the treatment of sexually transmitted diseases and vocational training'. Another Government edict, Resolution No. 06 on drug control, which was also issued in 1993, prescribed that all drug users have compulsory detoxification in rehabilitation centres (18). In March 1995, the Party Commission issued Directive No. 52 on HIV Prevention (18) according to which 'HIV prevention is considered the country's top priority'. The Directive called for 'healthy and faithful lives avoiding drugs and prostitution' and further linked AIDS and social evils in prescribing that 'interventions should be integrated with the prevention of social evils: first, drug abuse and second, sex work. Police should make timely discoveries and punish drug traffickers, producers, users, brothel owners and decoys' (18).

### ***Control of persons living with HIV and compulsory testing***

In June 1996, the Government issued Decree No. 34 on guiding the ordinance implementation (18), which, besides defining roles and

responsibilities of different ministries on the AIDS response, listed the responsibilities of PLWH and mandated that they inform their spouses of their HIV status. The Decree also prohibited PLWH from working in ‘certain jobs’ such as surgery or obstetrics. District health managers or higher-level agencies were given the authority to request that vulnerable populations at higher risk have HIV tests. This often meant that those who fell into the categories of drug users or sex workers were mandated by local agencies to test for HIV, and their results were kept and tracked by local agencies.

***From detention and control to harm reduction and individual right***

The National Assembly’s Ordinance on HIV (18) came into effect as of August 1, 1995 to ensure the confidentiality of PLWH and provided a counterbalance to the dominant coercive strategies focused on actual or suspected drug users or sex workers as well as PLWH. With this ordinance, it was prohibited to publicly share the name, age, address or photo of a PLWH. In March 2004, based on the commitments made to the Declaration of United Nations General Assembly Special Session on AIDS (UNGASS), the Government approved its National HIV Strategy in Vietnam till 2010 with a vision to 2020 (6). This strategy adopted more specific goals, targets and defined three categories of actions to be taken:

First, social solutions including effective leadership, multisectoral collaboration, community involvement and a practical legal framework; second, technical solutions including surveillance, voluntary testing, appropriate medical treatment and harm reduction interventions; and third, resource mobilisation and international collaboration. These included an action plan on prevention that focused on behavior change communication; harm reduction including needle/syringe provision; prevention of mother-to-child transmission; voluntary counselling and testing for HIV; blood transfusion safety; and sexually transmitted infection management.

In November 2005, the Communist Party issued Directive No. 54 on Strengthening Leadership on HIV prevention in new situation (6). It instructed ‘the concerned sectors to complete the consistent legal document system for the creation of a favorable legal environment and to issue policies for support and care for HIV-positive persons’. Mass media had mostly stopped giving negative information and images about AIDS with ‘skulls and crossbones’ (6). HIV/AIDS had slowly started to be de-linked from the social evils construct, encouraging society in general to develop more sympathy for PLWH.

*During the last few years, communication on HIV has reached the public. People understand causes and transmission of infection. Before, they were so scared of the disease, now they are more aware and do not isolate the infected people/.../Now HIV positive persons get closer to the community. (Provincial Health Official).*

The Law on HIV was adopted by the National Assembly in June 2006. It encouraged PLWH to participate in all social activities, including HIV prevention and also requested that the Government ‘implement harm reduction interventions’. According to the Law, the state budget pays for antiretroviral drugs while health insurance pays for medical expenses. In 2009, following WHO’s recommendations of 2006 on antiretroviral therapy (ART) for HIV infections in adults and adolescents, the Ministry of Health issued ART guidelines, according to which the cut-off levels for initiating the therapy include: (1) all patients with WHO clinical stage 4, (2) patients with clinical stage 3 and CD4 count under 350 cells/mm<sup>3</sup> and (3) patients with clinical stages 1, 2 with CD4 count of under 250 cells/mm<sup>3</sup> (21).

In June 2007, the Government issued Decree No. 108 with guidelines on implementation of harm reduction, antiretroviral treatment and the work of the PLWH as peer educators.

#### 4.2.2. The policy making process

Figure 1 shows a timeline for the policy-making process in Vietnam, illustrating the major policy documents for the three main actors: Communist Party, National Assembly and the Government. Vietnam's HIV policy evolved considerably during the 12 years with HIV getting on to and staying on the agenda for several reasons. Firstly, despite all early control efforts, the epidemic continued to spread with new cases being reported from all the provinces. Secondly, the person who was responsible for developing the National HIV Strategy of 2004 was appointed as one of the leaders of the Party Commission to be in charge of health and HIV.

*I was one of the persons who initiated development of the National Strategy and the new Party Directive/... / Our political system is that the Party takes the leadership, sets the directions, then the National Assembly will turn them into laws and the Government will make plans. (Party informant)*

This was just one of the important links between the Party and the Government implementing bodies, with Party directives preceding most of the important Government legislation on HIV. Fig. 1 illustrates how many of Vietnam's important policies on HIV were first formulated and adopted during 1995-1996, and were later replaced by new policies in 2005-2006, along the lines of those reported above.



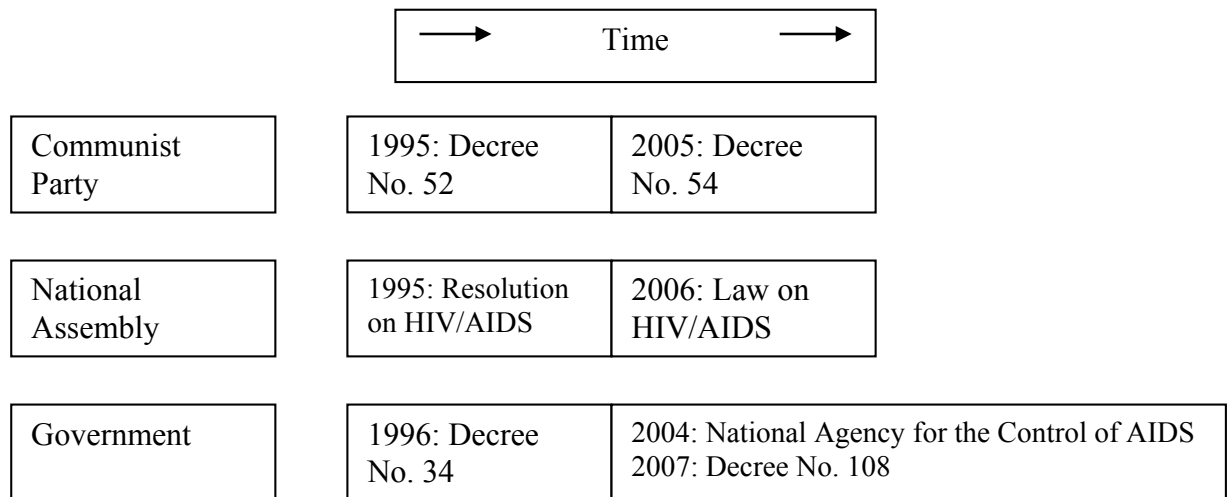


Figure. 1. Timeline of key HIV policies in Vietnam.

The Law on HIV reflected the change from traditional control measures to more internationally recognised measures and the policy development process illustrated the central role and capacity of the Party to bring about this change.

The Ordinance had been implemented for over 12 years since 1995. Its implementation in provinces met many difficulties /... / We added new articles in the Law such as organizational set up, fights against stigma and discrimination, and harm reduction interventions, etc. It was necessary to have all these components to prevent the epidemic. (National Assembly informant)

One informant reported that more direct experiences and evidence had been used in the policy-making process because of technical and financial support provided by international organisations.

We received both financial and technical support from donors. We did not have any financial difficulties. We could do whatever we wanted. (Party informant)

This support, for example, enabled the Party Commission to organise scientific conferences and international study visits to provide evidence to convince sceptics within the Party of the effectiveness of harm reduction.

*We built up the Party Directive in a new way /... / very different from the previous one. We hired an external professional team to collect suggestions from localities, ministries, party leaders, national and international experts, and even infected people /... / We organised four scientific conferences on sensitive issues such as harm reduction, syringe exchange and condom distribution. (Party informant)*

Implementation of harm reduction and health insurance for the patients were two of the most difficult and contentious topics during the debate on the Law on HIV at the National Assembly's sessions. The following response from a Ministry of Health informant revealed the problems that were encountered in ensuring coherent policies across different sectors - health and those responsible for enforcing pre-existing laws. It also shows that a process over time was required to bring about cross-sectoral policy change:

*The biggest difficulty was to reach agreement with other sectors, especially the Ministry of Public Security on harm reduction. We have to deliver clean syringes and needles for drug users. But if drug users were seen injecting each other they would be arrested by the police. Furthermore, the peer groups who deliver the syringes would also be arrested. So it was very difficult. Finally, the people understood that harm reduction is an intervention and not a kind of encouragement to drug addiction. (Ministry of Health informant).*

The issue of health insurance for antiretroviral costs was also described as contentious between the Ministry of Health and the Ministry of

Finance. It was seen as creating a very heavy burden on the economy and on health services.

A key event in 2006 was when the Law was passed, weighing heavily in the eyes of the central level key informants that the battles between Ministries had been won in favour of harm reduction interventions and mandated health insurance that would cover medical expenses for the PLWH. However, key informants at the provincial level were less sure how much influence the Law would have at the level of implementation. Key informants at both central and provincial levels reflected that although provincial representatives were invited to participate in the policy-making process, in practice the process was mostly restricted to central governmental institutions.

Through its resolutions and directives, the Party provides the policy directions for all aspects of national life. The Party has several commissions; the Commission for Popularisation and Education is in charge of science, culture, education and health. The Commission formulated Directive No. 52 and Directive No. 54. The National Assembly has the power to make ordinances and laws and takes direction from Party Commissions. Its Committee of Social Affairs is responsible for the appraisal of ordinances and laws in health and social areas including the Ordinance on HIV in 1995 and the Law on HIV in 2006. The Ministry of Health is responsible for drafting legal documents such as ordinances and laws relating to the health sector, and then submits them to the National Assembly for approval. The Ministry is also in charge of developing health strategies and submitting them to the Government for approval.

*Vietnam's political system is that the Party takes overall leadership on everything. The Party's directives and resolutions are concretized by the National Assembly into laws and ordinances. The Government turns them into strategies and plans. The Party raises the issues, the*

*National Assembly brings out the solutions, and the Government implements. (Party informant).*

Many key informants highlighted the acute shortage of human resources as a barrier to the implementation of HIV policy in Vietnam. Before 2005, HIV prevention was mainly carried out by part-time staff in provincial preventive medicine centres. In order to increase the number of staff in terms of quantity and quality for successful implementation of the National HIV Strategy (22), in 2005 the Ministry of Health decided to establish Provincial AIDS Centres (PAC) under the Provincial Health Department, to be responsible for implementing HIV prevention (23). Still, the recruitment of staff at PACs has not been easy. Reasons for difficulties in recruiting were described as: (1) health staff preferred to work in curative care and in hospitals rather than in preventive care, (2) health staff preferred to work in areas other than HIV prevention because of the low salaries and incentives and (3) health staff are reluctant to work with drug users and sex workers because of the extreme social stigma associated with such groups.

There are shortages of staff in terms of quantity and quality. New models of treatment and care take place even at district levels. Shortages of staff in districts are even more serious /... /AIDS Centres in many provinces have only 5 or 6 people. It was very difficult to recruit new staff /... / People said they prefer to work in hospitals to cure patients. Very few are willing to work in a preventive area, especially on AIDS. (VAAC Official)

Low incomes were reported as one of the main reasons for low work motivation. HIV prevention was considered as requiring less input from the medical professions and as having few career development advantages.

*Prevention deals with humanitarian issues like health education or public health. These programmes do not have much money. Therefore, staff don't have any other sources of income. Meanwhile a doctor just*

*needs some hours working in private clinics and earns as much as the monthly salary of preventive staff. (VAAC Official)*

Another informant from the same organisation added:

*Income is just one of the concerns. Most medical fields are linked with improving professional expertise, for example if you are a doctor, the more you treat patients the more experience you would gain. Then you become a good doctor. But if you work on HIV prevention, what professional experience could you get after 10-15 years? (VAAC Official)*

One informant suggested educating health staff to make them feel that their job is important and that it contributed to society, which might give them more job satisfaction and higher morale than they currently experienced:

Many PLWH became more actively involved in the care of other patients, through starting to work as peer educators and distributing syringes and condoms, thereby becoming agents of change. They were even trained to become nursing assistants and received government salaries.

*Ministry of Health has approved the nine month training of these people in nursing schools in Ho Chi Minh City. After the training, they can work as nurses to take care of other patients. They will receive government salaries /... / this is a unique Vietnamese initiative /... / PLWH share well with each other about their emotions and feelings. They are not afraid of being infected. (VAAC Official)*

However, more covert stigma continued to exist, as illustrated in the following quote from one key informant who saw a benefit from task-shifting to PLWH who would help reduce the risk of health staff becoming infected.

*PLWH can take care of each other. It is very good because they already have HIV so they are not afraid of being infected again when*

*taking blood or dressing the wounds of other patients. So we can reduce staff working accidents. (VAAC Official)*

### **4.3. Discussion questions**

1. How was the idea of the Program formed? Why was such policy idea was included in the agenda?
2. Which actors were involved in the above policy making process? Talk about the role and importance of such actors.
3. Which actors were involved in the implementation of the topics. What were your difficulties in policy implementation?
4. Could you please comment on the existing policy making process. Please provide a number of recommendations for improvement.

## Case study 5

# IMPACT EVALUATION OF HEALTHCARE POLICY FOR THE POOR

### 5.1. Background

In October 2002, the Prime Minister promulgated Decision 139 on medical examination and treatment for the poor, aiming to strengthen a number of programs to help the poor and people in difficulties to have access to healthcare services. The policy beneficiaries included the poor, people in difficult communes and ethnic minority people in difficult provinces. It was estimated that the total number of policy beneficiaries was 14.6 million people or 18% of the whole country's population in 2002.

According to Decision 139, Fund for medical examination and treatment for the poor was established at provincial level and this fund was used for the purchase of health insurance or to directly refund the costs of healthcare services to the beneficiaries. The policy objective was to reduce financial difficulties for the poor in having access to healthcare services and reducing self pay costs.

In 2007, the study team included Department of Health Policy, Ministry of Health; Independent advisor, Bangkok; WHO, Hanoi; Institute of Health Strategy and Policy, Hanoi with funding from Vietnam-Sweden-Asian Development Bank Health Cooperation Program used a number of methods for quantitative and qualitative analysis, information processing methods, information description and propensity score matching approach to evaluate impacts of Decision 139 on healthcare for the poor.

**Objectives of the evaluation were determined to measure** the impact of the implementation of Decision 139 on the use of healthcare services, self

pay costs and living standards of poor households, households in communes with special socio-economic conditions, ethnic minority households in the Central Highland, and 6 provinces with extreme difficulties in the Northern mountainous region.

The evaluation team used the following methods of information collection:

- Literature review.
- Processing information with software.
- Information description: tables, graphs, maps.

To conduct the impact evaluation, data collected in 2002 and 2004 of Vietnam Household Living Standards Survey (VHLSS) were used. These were the two years before and after the implementation of Decision 139. Data from Vietnam Household Living Standards Survey 2004 were collected for the period from March to November 2004. Data from Vietnam Household Living Standards Survey 2002 were collected for 12 months of the year, but mainly focusing on January, May, August, and October. For both surveys, the questions related to the use of healthcare services and costs were asked for the period of 12 months before the surveys.

**Figure 1: Timeline for implementation of Decision 139 and periods related to the surveys**



Year	2001				2002				2003				2004		
Quarter	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3
<b>VHLSS 2002 related time period</b>															
<b>Decision 139 was approved</b>															
<b>Establishment of Healthcare Fund for the poor</b>															
<b>Commencement of fee exemption &amp; reduction for healthcare services</b>															
<b>VHLSS 2004 related time period</b>															

**Figure 1** illustrates the timeline related to data collection and policy implementation. Survey in 2002 was considered the boundary for comparison of outcomes before and after policy implementation. The period of 2003 and 2004 was covered in the survey in 2004 which was the first year of policy implementation, allowing the evaluation of short-term impact of the policy, during which many difficulties in policy implementation were not resolved. In almost all provinces, it was not until June or July 2003 that the households started to benefit from the policy, even until 2004 with some households. The fact that the policy had not been fully carried out at the time of the survey was an advantage for the impact evaluation because it allowed the comparison between policy beneficiaries who benefited and did not benefit from the policy, who had quite similar characteristics, thus it would partly resemble a random experiment. However, full impact of the policy may not be well reflected at such early time. When VHLSS data in

2006 are available, they can be used to evaluate the longer term impacts of the policy.

Vietnam Household Living Standards Survey (VHLSS) contained so many indicators (variables) which could be used to recognize policy beneficiaries, to identify their existing benefits in order to estimate the propensity score and the result variables to estimate impact of the policy on the use of healthcare services, health costs and different perspectives of living standards. Most of the questions in the 2004 survey were consistent with the 2002 survey.

However, between the 2002 and 2004 surveys, there were important changes in the healthcare questions in order to improve the data quality, which resulted in a number of difficulties for the comparison. The inpatient admission data were collected for the period of 12 months before the time of survey for both VHLSSs in 2002 and 2004, and Vietnam National Health Survey (VNHS) 2002 with a different question structure, yet the results were very much similar to those of Vietnam Household Living Standards Survey 2002. However, inpatient admission rate estimated from Vietnam Household Living Standards Survey 2004 was 50% higher than that in the National Health Survey 2002, yet the reports from state hospitals indicated that the inpatient admission growth rate in 2003 compared with 2001 (nearly the same with the survey period in the two survey) was only about 7%, while inpatient admission in private health establishments only accounted for a very small portion.

The comparison of outpatient utilization rates was more difficult. Comparing the outpatient utilization rates between VNHS and VHLSS 2002 indicated that VHLSS estimated a too low number of outpatient visits. The number of outpatient visits (per year) from VNHS was 14 times higher than that from VHLSS 2002, and the number of outpatient visits as reported by state hospitals was 23 times higher than that from VHLSS 2002. Some of

the differences could be attributed to different methods of data collection. VNHS asked questions for the prior 4-week time period with all the documents on the medical visits and treatments during that 4 weeks and the questions on illness and diseases were placed immediately before, all such factors were designed to minimize recall errors. Such data could be multiplied with 12 months to gain the annual rate. The surveyors were also allowed to record the number of medical visits at the same healthcare establishment in a separate line which was totally separate from the questions related to inpatient and outpatient visits to make it less boring for surveyors and respondents and to record the exact number of medical visits. In contrast, the VHLSS 2002 survey required respondents to remember the number of outpatient visits during 12 months (possibly resulting in quite large recall errors and the resulted number was significantly smaller), not raising any questions on illnesses and diseases and requiring the surveyors to record each medical visit in a separate line, while only sparing 20 lines to record both the inpatient and outpatient visits in the same section. In the VHLSS 2004 survey, the data on outpatient visits were based on memory for a period of 12 months, but the questionnaires included questions on illnesses and diseases to help respondents recall their medical visits during the past 12 months and allowed the recording of multiple visits at the same healthcare establishment in the same line. Comparing VHLSS 2004 and VNHS 2002 data indicated that the number of outpatient visits recorded by VHLSS 2004 was 50% lower than that recorded by VNHS 2002. Regarding almost all types of healthcare establishments, data for 2004 were lower, except for provincial hospitals, central hospitals and regional general clinics whose medical visits in the 2004 survey were higher. Comparing VHLSS 2002 and 2004, the number of outpatient visits reported in 2004 was 7 times higher than that in 2002, and such differences happened with almost all types of healthcare establishments. Reports of the Government on

outpatient visits at State healthcare establishments indicated that the number of outpatient visits in these establishments in 2003 only increased by 16% compared with that in 2001 (while the figure increased by 5.5 times if using results of VHLSS 2004 compared with that of 2002).

Comparing 2002 and 2004 surveys, it could be seen that the rates of increase in the number of inpatient and outpatient visits were different. However, it did not seem that all errors reflected a systematic difference between the policy beneficiaries and non-beneficiaries. Thus, if there were positive impacts of the policy on the results, the difference between 2004 and 2002 of the treatment group would be higher in terms of absolute value than the difference in the non-treatment group regardless of the data problems, yet the conclusions could not be drawn based on absolute changes.

Outlier observations in data might have significant impacts on the outcomes (discussed below); therefore it was important to clarify the number of outlier observations, in which situation it happened and what were their nature. Outlier observations could be due to surveyors' errors during the recording or errors during the data input process, in this case the observations could be corrected or discarded. However, probability distribution of the number of medical visits and health costs of the households was very asymmetrical, with lots of values observed in normal situation, suggested that the outlier observations should be paid proper attention, except where solid evidences existed that asymmetrical distribution was due to non-sampling errors. The problem was that it was very difficult to distinguish between the two above situations in order to know whether to discard or keep such observations, particularly with limited information on healthcare available in VHLSS (for example, information was available on the duration of inpatient treatment or types of services used). Therefore, all outlier observations were kept in our main analysis, yet

a number of outliers were discarded in additional analyses to evaluate positive treatment effect in the findings.

In order to identify outlier observations in the data, the evaluation team based on the estimates gained from VNHS of the total number of inpatient admissions, total costs and average costs per inpatient and outpatient visit. Estimates of costs in 2002 were adjusted for an increase of 30% due to inflation in pharmaceutical prices during the period of 2002 - 2004 (based on pharmaceutical price index of the General Statistics Office) in order to get the upper threshold in examining whether or not an observation was an outlier. The upper thresholds of 2004 and 2002 were reported in column 1 of **Table 1** (estimates for 2004 covering inflation of 30%). The lowest threshold was not set because the cost equal 0 was reasonable due to health insurance, cost exemption or reduction.

In VNHS 2002, the largest number of inpatient visits in 12 months was 11. In VHLSS 2004, 7 observations exceeded the maximum value, with the largest value of 36 inpatient visits during 12 months. Due to the difference in duration covered by the question, it was impossible to use this method to estimate the outlier observations for the number of outpatient visits. For people with chronic diseases, many outpatient visits per month could be reasonable. The three largest values of the number of outpatient visits were 72, 60, 56 visits, equivalent to 5 or 6 visits per month, while in VNHS 2002, a surveyed case reported 32 outpatient visits during the 4 week covered by the question.

Cost data seemed to include even more outlier observations. The highest cost for an inpatient admission in VNHS 2002 was VND 144 million (or VND 187 million after being adjusted for inflation for two years between 2002 and 2004). No observations exceeded this threshold in 2004 data. However, when we checked the costs for a medical visit in different healthcare establishments, an outlier observation was noted. At district

hospitals, VND 32 million was paid for an inpatient admission, while the highest inpatient cost at district levels in VNHS was VND 18 million, and the second highest cost was only VND 17 million in VHLSS 2004.

There were 42 outlier observations in the costs of outpatient visits. There were 17 outlier observations that exceeded the highest costs of VND 4.1 million per outpatient visit. However, when data were sub-divided into types of healthcare establishments, there were total 42 outlier observations. Most of these outlier observations did not seem reasonable, yet they were kept due to the shortage of information to identify whether they were normal observations or came from errors in the survey.

Outlier observations in VHLSS 2002 were also checked. An outlier observation was found for the number of inpatient visits with 12 visits per year, very close to the highest value in VNHS and was completely reasonable. There were 4 outlier observations exceeding the highest average costs per inpatient admission with VND 6 to 11 million at commune health clinics/regional general clinics, while there were no outliers regarding state hospitals and private healthcare establishments. With regard to outpatient visits, there were 132 outlier observations in the outpatient treatment costs, yet when examining each level of medical treatment, there were total 280 outlier observations with outlier value fluctuations presented in **Table 1**. The large number of outlier observations for costs per outpatient visit was in line with the reporting of low number of outpatient visits and relation to costs in VHLSS 2002 data.

In the 2004 survey, the questionnaires for communes/precincts were not filled in urban areas. However, a number of (characteristic) variables of the communes were important to the propensity score matching approach, e.g. whether or not a commune/hamlet was under Program 135 and the distance from the commune to the nearest town. Information on the communes under Program 135 was linked with information on the same in

the VHLSS 2002 survey, and approximate estimates of the distances between the communes and the towns were calculated by checking the maps, aiming at filling the missed information in the survey, and in a number of cases at cleaning the data for the communes that lacked information on poor communes in accordance with program 135.

VHLSS survey was conducted with a relatively large sample size selected from all provinces nationwide. The sample size of VHLSS 2004 survey included 9,188 households with 40,438 individuals. Panel data of 2002 - 2004 included 4,081 households with 16,697 individuals. Samples were selected using the stratified random sampling method with 128 stratas representing the urban and rural areas of each province. The clusters were the areas listed in the census. The samples were selected using the two-stage sampling, first the listed areas were selected, then the households. The probability of being selected into the sample changing by each cluster requires the use of weights in various types of statistical analysis to ensure the estimates gained from the samples were not deviated. However, the propensity score matching approach did not use weights because only a portion of the sample was used in the treatment effect evaluation. This was because a certain number of cases need to be discarded to ensure normal support and corresponding ratio of the control group in relation to the policy beneficiaries with high propensity score (discussed in later section below), a number of untreated observations were not used because they were not matched, and a number of untreated observations could be used multiple times, and all these issues were described clearly in later section. However, in the below analysis, clustering is used in bootstrap procedure (self-developed) to estimate standard errors of the impact parameters, which was discussed later.

**Table 1: Outlier observations of costs of outpatient visits 2002&2004**

	Upper threshold from VNHS (Thousand VND)*	Number of observations in VHLSS exceeding thresholds	Smallest value of outlier observations (Thousand VND)	Highest value of outlier observations (Thousand VND)
2004 VHLSS	4,113	17	4,200	15,000
<b>General</b>	<b>1,106</b>	<b>9</b>	<b>1,200</b>	<b>7,000</b>
Commune health clinics/ regional general clinics	3,383	2	5,000	7,000
District hospitals	2,886	27	3,000	15,000
Provincial/central hospitals	4,113	4	4,700	9,000
Private healthcare establishments				
2002 VHLSS	3,164	132	3,200	49,000
<b>General</b>	<b>851</b>	<b>96</b>	<b>890</b>	<b>6,000</b>
Commune health clinics/ regional general clinics	2,602	121	2,700	49,000
State hospitals	3,164	63	3,200	20,000
Private healthcare establishments				

\*Note: Threshold values in 2004 in column 1 was adjusted to be increased by 30% for inflation from those in VNHS 2002.

## 5.2. Treatment effect evaluation process

The evaluation team used the propensity score matching approach to evaluate impacts of the policy for examination and treatment for the poor in accordance with Decision 139. The propensity score, or the probability of being in the treatment group (benefiting from the policy), was estimated using logistic (logit) regression with large fluctuations of covariates. Then a sample of non-treatment individuals (control group) whose propensity scores were nearly the same as those of the individuals in the treatment group. This created a sample of non-treatment observations with probability distribution similar to that of the treatment group. Therefore, the treatment effect could be measured by comparing the average outcomes of the



treatment group and the matched non-treatment group (assigned to the control group for comparison with the treatment group). This method is designed to eliminate errors due to the observed covariates.

The allocation of households into the treatment group or non-treatment groups of Decision 139 was based on: households classified as poor in accordance with the poverty reduction program, all households in poor communes in accordance with Program 135 of the Government, and ethnic minority households in 12 mountainous provinces – with quite a number of households falling into all two or three groups. However, whether a beneficiary of Decision 139 who received his/her health insurance card or not depended on how the policy was carried out in such locality, which was different among the localities because the criteria could be determined by local program implementers. For example, a few provinces intentionally prevented people from benefiting from Program 135, while the delivering of cards was postponed in some other provinces, which meant some beneficiaries of Decision 139 did not receive their cards at the survey time. Such observed covariates were controlled in the estimation of propensity score.

The unobserved factors resulting in self-classification, e.g. individuals requesting to be classified as poor because of bad health, reporting changes of ethnicities, moving to communes under Decision 139 or other activities to be provided with free healthcare cards or health insurance cards for the poor, could not be controlled by propensity score matching approach. However, the unobserved time-changing factors that affected the self-classification were discarded by double difference estimation in the double difference approach described below. Any other deviations due to unobserved time-changing factors were assumed to be insignificant.

### *5.2.1. Identifying the comparisons related to impact estimate*

- Beneficiaries of Decision 139 and already being provided with free health insurance cards or free healthcare cards.
- Beneficiaries but not yet being provided with health insurance cards.
- Not beneficiaries of the policy.

In this evaluation, three comparisons were conducted (**Table 2**). The first comparison (A in **Table 2**) was between two treatment groups, specifically between the group who were provided with the cards, i.e. they had better healthcare opportunities compared with the matched treatment group who were not provided with the cards.

The second comparison which could be considered a better one (B in **Table 2**) was between the treatment group who were provided with the cards and the non-treatment group who did not have a card, therefore this comparison was not disturbed by the control group who did not benefit from the policy.

The third comparison (C in **Table 2**) was conducted between the treatment group who were not provided with the cards with the non-treatment group. It allowed us to evaluate the area where the first comparison was likely disturbed by people without a card but benefiting from the policy.

**Table 2: Three comparisons conducted to evaluate impacts of Decision 139**

<b>Comparison</b>	<b>Treatment group</b>	<b>Non-treatment group (control group)</b>
A	Policy beneficiaries provided with free healthcare cards or health insurance cards for the poor	Policy beneficiaries without a card
B	Policy beneficiaries provided with free healthcare cards or health insurance cards for the poor	Non-beneficiaries and no cards
C	Policy beneficiaries without a card	Non-beneficiaries and no cards

### ***5.2.2 Single differences and Double differences***

Single differences mean comparing outcomes of the treatment group with that of the non-treatment group.

Double differences, or difference in differences allow the study team to eliminate difference due to unobserved factors which correlated with the outcomes but did not change over time. For example, the time when cards were just provided, people with more healthcare demand were prioritized to be examined and treated, e.g. people with chronic diseases (a characteristic that could not be observed in the survey), subsequently they seemed to use more healthcare services and possibly paid more for medical treatment. In this case, double-difference estimates eliminated two types of differences, difference due to the differences among the observed correlation variables between the treatment group and non-treatment group, and difference due to the differences of the unobserved factors that did not change overtime (e.g. chronic diseases). Difference due to differences in the unobserved time-changing factors may still exist, but was assumed to be minimal in this study.

### ***5.2.3. Estimation of propensity score***

The objective of the estimation of propensity score is to reduce the overlapping of properties in a variable (i.e. probability of being in the treatment group or “propensity score”) that can be used to find the control observation for each observation in the treatment group so as to arrive at a control group with distribution as similar as possible to that of the treatment group. In this report, the propensity score was estimated using logistic regressions regarding a sample of individuals.<sup>6</sup> Because three comparisons

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<sup>6</sup> Though the probability of being benefited from the program depended on the characteristics of the households, but data indicated that not all members of the households that were entitled to the policy were provided with the cards, e.g. household members had different types of health insurance cards (e.g. policy beneficiaries), children under six in a number of regions (because children under six were exempt from medical expenses at State healthcare establishments) or some people did not receive their cards for other reasons (e.g. students had student health insurance cards).

were conducted for each single difference and double difference estimate, six different logistic regression models were estimated. Dependent variables in the logistic regression model were binary variables (coded as 1 or 0), representing the treatment group and non-treatment group as described in **Table 2** above. With regard to panel data analysis, policy beneficiaries were defined based on the answers to the questions on free healthcare cards or health insurance cards for the poor in the 2004 survey (because data for 2002 were collected before the policy was implemented), while the explanatory variables were mostly from the 2002 survey.

The objective of the estimation of logistic regression model was to estimate the propensity score, ensuring better covariate balance between the treatment group and matched non-treatment group.

With regard to panel data, the explanatory variables were obtained from the 2002 survey to avoid any effect of the policy (implemented since 2003) on the explanatory variables. Except for the variables on date of interview were from the 2004 survey, which was obviously not under impact of Decision 139. Another exception was the variable about whether or not a person was ill during the past 12 months, because it could not be affected by Decision 139. However, in the logistic regression models used for the cross-section comparisons (B and C in **Table 2**) based on VHLSS 2004 survey, the variables measuring income and expenditure for 2004 were required to achieve balance for these variables, which had close relationships with both the use of healthcare services and self pay costs. Therefore, no estimate reported impact of the policy on living standard outcomes in the cross-section comparisons B and C. The study team decided to include in the model a false variable indicating whether or not a person went to school during the past 12 months (because that person may be entitled to student health insurance in 2004). Therefore, no outcomes related to schooling were analyzed in this study. The selection of variables used in

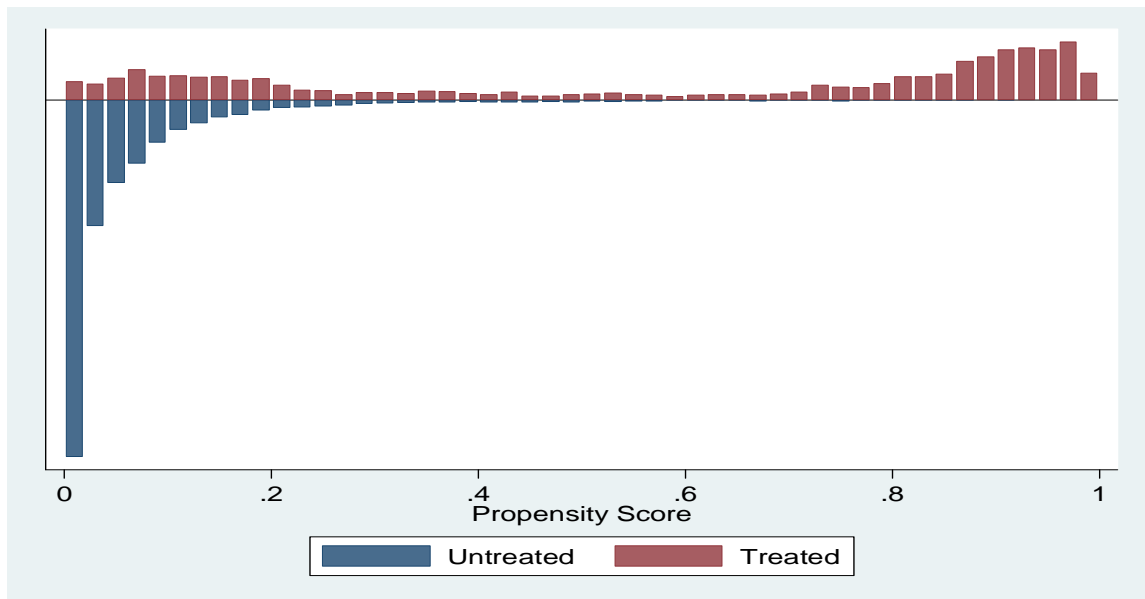
the logistic regression models depended on each comparison. For example, the variable of policy beneficiaries may be used in the model for comparison A, but not for other comparisons.

The difference in policy implementation among the provinces had an important role in identifying whether or not a household received free healthcare cards or health insurance cards for the poor, yet the use of variables by province would result in poor covariate balance after matching. The use of false variables by region resulted in better balance compared with false variable by province and avoided the need to discard observations in the provinces where there was no change of people with cards in panel data. False variables by region to a certain extent would reflect the change in policy implementation in neighboring provinces.

#### *5.2.4. Identifying normal scope of support*

Figure 2 illustrates the normal scope of support using outcomes of B comparison with cross-section data in the study. The horizontal axis reflects the estimated propensity scores. The area of each red rectangle above the line in the column graph reflected the relative frequency of the observations in the treatment group using the range of corresponding propensity score (range of propensity score is displayed by the width of the rectangle), while the area of each green rectangle below the line in the column graph reflected the relative frequency of the observations in the non-treatment group using the range of corresponding propensity score. At the lower threshold with propensity score of less than 0.0016, there were quite a number of untreated cases, but no treated cases. In contrast, at the propensity score of higher than 0.9673, there were no untreated cases, only treated cases. Therefore, the normal scope of support was from 0.0016 to 0.9673.

**Figure 2: Illustration of normal scope of support (B comparison with cross-section data)**



### 5.2.5. *Trimming*

In the cross-section comparisons between treatment and non-treatment groups (comparison B), 1,200 treated cases within the range of propensity score from 0.897 to 0.967 while only 34 untreated cases were in this range. Therefore, outcomes of 34 cases could be used as a representative for 27% of total estimated impact, making the result very sensitive to any outlier observations or unusual cases in the control group. Crump et al. proposed a sample trimming algorithm in order to minimize the variance of the average treatment effect estimators.<sup>7</sup> The study team used an algorithm according to which the treated observations were discarded when the number of untreated observations was less than 5% of the treated observations.<sup>8</sup> **Table 3** presents the sample size before and after the estimation of propensity scores, ensuring the analysis within the normal scope of support, trimming and matching.

**Table 3: Sample size at different stages of propensity score matching approach**

<sup>7</sup> Crump R, Hotz J, Imbens G and Mitnik O (2006). “Moving the Goalposts: Addressing Limited Overlap in Estimation of Average Treatment Effects by Changing the Estimand.” Processed. University of California (Berkeley).

<sup>8</sup> A portion of the sample with a propensity score larger than 0.6 was divided into 20 portions with similar frequency and applying the minimum standards of 5% as stated in the document. Individuals with propensity scores higher than the minimum value in any portion did not meet the 5% standard and are discarded from the sample.

	<b>Policy beneficiaries with a card</b>	<b>Policy beneficiaries without a card</b>	<b>Non-beneficiaries with no cards</b>	<b>Total</b>
<b>Single differences (cross-section data 2004)</b>				
<b>Common denominator (2004)</b>	<b>4,844</b>	<b>5,388</b>	<b>29,171</b>	<b>39,403</b>
A-Policy beneficiaries with cards compared with no cards	4,844	5,388	..	10,232
Sample for estimation of propensity score	4,843	5,386	..	10,229
Sample for normal scope of support	4,843	5,375	..	10,218
Sample after trimming and within the normal scope of support	4,843	5,375	..	10,218
Matched sample for comparison	4,843	4,656	..	9,499
B-Beneficiaries with cards compared with non-beneficiaries	4,844	..	29,171	34,015
Sample for estimation of propensity score	4,843	..	29,164	34,007
Sample for normal scope of support	4,489	..	28,038	32,527
Sample after trimming and within the normal scope of support	3,287	..	28,004	31,291
Matched sample for comparison	3,287	..	6,564	9,851
C-Policy beneficiaries without a card compared with non-beneficiaries	..	5,388	29,171	34,559
Sample for estimation of propensity score	..	5,386	29,152	34,538
Sample for normal scope of support	..	5,108	27,549	32,657
Sample after trimming and within the normal scope of support	..	4,617	27,509	32,126
Matched sample for comparison	..	4,617	4,787	9,404
<b>Double differences (2002-2004 Panel)</b>				
<b>Common sample (2002-2004 Panel)</b>	<b>1,877</b>	<b>2,235</b>	<b>12,141</b>	<b>16,253</b>
A-Policy beneficiaries with cards compared with no cards	1,877	2,235		4,112
Sample for estimation of propensity score	1,807	2,159		3,966
Sample for normal scope of	1,784	2,151		3,935

	<b>Policy beneficiaries with a card</b>	<b>Policy beneficiaries without a card</b>	<b>Non-beneficiaries with no cards</b>	<b>Total</b>
support				
Sample after trimming and within the normal scope of support	1,784	2,151		3,935
Matched sample for comparison	1,784	2,151		3,935
B-Beneficiaries with cards compared with non-beneficiaries	1,877		12,141	14,018
Sample for estimation of propensity score	1,807		11,808	13,615
Sample for normal scope of support	1,491		11,661	13,152
Sample after trimming and within the normal scope of support	1,309		11,647	12,956
Matched sample for comparison	1,309		4,133	5,442
C- Policy beneficiaries without a card compared with non-beneficiaries	..	2,235	12,141	14,376
Sample for estimation of propensity score	..	2,159	11,808	13,967
Sample for normal scope of support	..	2,076	10,930	13,006
Sample after trimming and within the normal scope of support	..	1,825	10,917	12,742
Matched sample for comparison	..	1,825	1,802	3,627

In a comparison requiring the randomization of the distribution of policy beneficiaries, the propensity score matching approach applied for the data set of observations may meet with difficulties because it was impossible to measure the impacts on the majority of policy beneficiaries due to the high range of propensity score of the treated observations and a properly matched observation could not be found when estimating average treatment effects on these policy beneficiaries. For example, 1,160 policy beneficiaries were rejected because they were not within the normal scope of support or discarded in cross-section comparison between policy beneficiaries with cards and non-beneficiaries with no cards (e.g. comparison B in **Table 2**), 99% was ethnic minority people, 75% of



household leaders did not complete primary school, 99% resided in mountainous areas, 62% resided at least 20 km from the nearest town, and 53% resided in the Northwest. These observations were discarded in the evaluation team's analysis, thus the treatment effect was not estimated on the full sample of treated observations but only using a portion of the sample with available matching observations. Fortunately, the comparison between cases provided with cards and not provided with cards in the treatment group (comparison A) did not face the same problem and few observations were discarded due to their positions out of the normal scope of support or trimmed (**Table 3**). However, a weakness in comparisons B and C was that pretty many treated observations did not match with untreated ones and thus were discarded from the analysis.

#### *5.2.6. Selection of matching method*

In this analysis, nearest neighbour matching and nuclear matching were used. Nearest neighbour matching was used in all cross-section data analysis. The number of nearest neighbours was selected based on the number that brought the best balance of covariates after matching (described later). Therefore, in the cross-section data analysis, the analyzers used 6 nearest neighbours for comparison A, 5 nearest neighbours for comparison B, and 2 nearest neighbours for comparison C. In the panel data analysis, best balance was achieved with nuclear matching (described later). However, with comparison B using 11 nearest neighbours for matching, and with comparison C using 2 nearest neighbours for matching, the outcomes were similar to those of the nuclear matching, yet it took less time for running the program and there was almost no difference in the estimates of impact. Therefore, the evaluation team used nearest neighbour matching to get the estimates for comparisons B and C with regard to panel data, the estimates were reported later in this study.

In this analysis, the range width of 0.06 (selected randomly, default value in “psmatch2” software) was used for comparing outcomes of people with and without cards among treatment group (comparison A) in panel data. Nuclear matching was not used in other panel data comparisons because outcomes were not much different with that of nearest neighbour matching, but more time would be required to run the programs.

### 5.2.7. *Matching software*

In this study, the analysts used “psmatch2” program developed by Leuven and Sianesi<sup>9</sup>. The program took into account the implementation of several different propensity score matching methods including nuclear matching and nearest neighbour matching used in this study. It matched the calculations and produced a weight for each observation. In nearest neighbour matching, weight for a control observation was the frequency that such observation would be used for matching and equal 0 with unmatched control observations. In nuclear matching, weight of control observations was the same weight for matched observations. All treated observations were assigned with a weight of one, regardless of matching methods.

The analysis of actual weights obtained from matching in the study presented in **Table 4** indicates that a number of untreated observations were used multiple times to match with a treated one. For example, in the comparison of policy beneficiaries without a card with non-beneficiaries (comparison C), a number of cases were used 34 times. The fact that a control observation was used multiple times in matching analysis was normal, yet the estimated treatment effect may be sensitive to the outlier observations used multiple times for matching.

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<sup>9</sup> E. Leuven and B. Sianesi. (2003). "PSMATCH2: Stata module to perform full Mahalanobis and propensity score matching, common support graphing, and covariate imbalance testing".  
<http://ideas.repec.org/c/boc/bocode/s432001.html>. This version 3.0.0.

**Table 4: Description statistics on matching weights of non-beneficiaries by each comparison in the analysis**

	Weight media n	Weight minimu m value	Weight maximu m value	% of weight >3	% of weight >10	Number of untreated observations used
<b>Single differences</b>						
A-Policy beneficiaries with cards compared with no cards	0.67	0.17	12.33	3.50	0.21	4,656
B-People with cards compared with non-beneficiaries	0.20	0.17	26.60	1.77	0.41	6,564
C-Policy beneficiaries with no cards compared with non-beneficiaries	0.50	0.33	34.00	3.72	0.71	4,787
<b>Double differences</b>						
A-Policy beneficiaries with cards compared with no cards	0.67	0.03	4.60	0.98	0.00	2,151
B-People with cards compared with non-beneficiaries	0.18	0.08	17.55	1.09	0.24	4,133
C-Policy beneficiaries with no cards compared with non-beneficiaries	0.50	0.33	25.00	3.61	0.39	1,802

### 5.2.8. *Checking balance after matching*

A key criterion to see whether or not the matching results are considered of value is that distribution of observed characteristics (covariates) of the treatment group should be as similar as possible to that of the matching control group. In the analysis, two criteria independent of the sample size were used to evaluate whether or not covariate balance was improved and deviations were reduced, including:

- Reduction of mean, median and maximum of absolute “standard deviation”<sup>10</sup>.

<sup>10</sup> Standard deviation (proposed by Rosenbaum and Rubin to measure the balance) is the sample covariate mean difference between the treatment group and non-treatment group (full sample or matched sample) measured by percentage of square root of the average sample variance of the treatment group and non-treatment group.

- The reduction of false  $R^2$  in probit regression to estimate propensity score after matching, for example: the observed characteristics explained very little about the variation of propensity score in the comparison sample with a mix of policy beneficiaries and non-beneficiaries.

With regard to the first criterion for evaluation of covariate balance, **Table 5** presented the main characteristics of the distribution of absolute standard deviation before and after matching for 3 comparisons conducted in the cross-section data and panel data analyses. A quick check of the table revealed that mean, median and maximum values of absolute standard deviation after matching were much smaller. However, this table also indicated that covariate balance after matching for comparison A (cross-section data and panel data) was better than that for comparisons B and C.

**Table 5: Analysis of absolute standard deviations before and after matching**

	Comparison A		Comparison B		Comparison C	
	Before	After	Before	After	Before	After
<b>Cross-section data</b>						
Mean deviations	12.82	2.30	24.25	4.13	22.11	4.04
Median of deviations	9.36	1.69	15.93	2.22	15.87	3.29
Standard deviation of deviations	11.83	1.83	26.78	4.80	22.02	3.11
Minimum value of deviations	0.14	0.06	0.11	0.26	0.16	0.25
Maximum value of deviations	53.29	6.77	111.04	23.51	105.22	16.68
Number of explanatory variables	38	38	40	40	44	44
<b>Panel data</b>						
Mean deviation	12.42	1.79	27.08	6.48	24.04	3.86
Median of deviation	10.64	1.41	19.26	4.94	19.32	3.10
Standard deviation of deviations	9.39	1.36	25.98	6.50	22.65	2.94
Minimum value of deviations	0.24	0.01	0.33	0.05	0.06	0.18
Maximum value of deviations	33.25	5.10	105.66	33.71	98.30	11.99
Number of explanatory variables	42	42	41	41	41	41

Regarding cross-section data, the variables had weak balance (i.e. deviations of more than 5%), including the number of people in a household, residence in the Southeast, household leader being a man, and household leader being an ethnic minority person in a mountainous province. With

regard to the set of panel data, only the number of people in a household had a deviation of more than 5% after matching.

With regard to the second criterion to assess covariate balance, results in **Table 6** indicated that false  $R^2$  obtained from the probit model after matching was much smaller. However, results in **Table 6** also showed that  $R^2$  was not reduced to 0 after matching (particularly in comparisons B and C), meaning that the matching reduced but not yet fully eliminated the potential errors in the impact estimates due to the difference of observed characteristics between the treatment and control observations.

**Table 6: False  $R^2$  in change forecast models before and after matching**

	Before matching	After matching
Comparison A-cross-section data	0,133	0,006
Comparison B-cross-section data	0,348	0,019
Comparison C-cross-section data	0,306	0,016
Comparison A-panel data	0,104	0,003
Comparison B-panel data	0,352	0,042
Comparison C-panel data	0,335	0,019

Because propensity score matching significantly reduced the difference of covariates in comparing policy beneficiaries with cards and without cards (comparison A), the outcomes were considered pretty good and thus were emphasized in this impact evaluation. However, it was likely that policy beneficiaries without cards may still benefit from the policy, other comparisons were also taken into consideration in order to have a full picture of treatment effect.

### ***5.2.9. Estimating standard errors***

In the study, propensity score was estimated, not a fixed value, and data used in the impact evaluation were from VHLSS survey, which was conducted using cluster sampling. Therefore, direct estimation of standard errors using “psmatch2” program could not be used because estimated errors would be lower than the actual standard errors.

To estimate the solid estimated value of standard errors, the study team used bootstrap (self-developed). In order to conduct bootstrap, based on the available samples, the study team re-select random samples with replacement, maintaining the former sample size, then using each new sample to re-estimate the propensity score, this sample was later trimmed based on the re-estimated propensity score, the policy beneficiaries were matched and a set of new estimates were be obtained. In order to obtain the standard errors of bootstrap which were corrected with cluster sampling, the study team re-select the samples by cluster sampling instead of individuals (for example, continuous random samples of the clusters were produced). For this analysis, the bootstrap procedure was repeated 100 times and later standard errors were directly estimated from 100 different estimates of the treatment effect.

#### *5.2.10. Summary of treatment effect evaluation results*

Results presented in **Table 7** indicated that there was not much difference in the number of outpatient visits or the number of inpatient visits between the treatment group with cards and the matched group without free healthcare cards or health insurance cards. However, there was interesting difference in terms of where people visited for medical treatment. The policy beneficiaries with free healthcare cards used much more outpatient services at state healthcare establishments than matched policy beneficiaries without cards, while they used much less private services. In terms of inpatient treatment, policy beneficiaries with cards had a significantly smaller number of visits at commune health clinics or regional general clinics and a much higher number of inpatient visits at district hospitals compared with matched policy beneficiaries without cards.

**Table 7: Impact on the use of healthcare services – Comparison A-  
cross-section data comparison of policy beneficiaries with cards with  
people without cards**

	Average of card-holders	Average of non card-holders	Difference between two averages	% difference	Bootstrapped standard errors	P-value
Number of outpatient visits	0.818	0.786	0.033	4%	0.060	0.585
Number of outpatient visits at commune health clinics/regional general clinics	<b>0.380</b>	<b>0.308</b>	<b>0.072</b>	<b>23%</b>	<b>0.034</b>	<b>0.034</b>
Number of outpatient visits at district hospitals	<b>0.144</b>	<b>0.078</b>	<b>0.066</b>	<b>85%</b>	<b>0.022</b>	<b>0.003</b>
Number of outpatient visits at provincial/central hospitals	<b>0.051</b>	<b>0.029</b>	<b>0.022</b>	<b>74%</b>	<b>0.009</b>	<b>0.018</b>
Number of outpatient visits at State hospitals	<b>0.195</b>	<b>0.107</b>	<b>0.088</b>	<b>82%</b>	<b>0.025</b>	<b>0.000</b>
Number of outpatient visits at private health clinics	<b>0.222</b>	<b>0.357</b>	<b>-0.135</b>	<b>-38%</b>	<b>0.039</b>	<b>0.000</b>
The number of inpatient visits	0.125	0.118	0.007	6%	0.012	0.557
The number of inpatient visits at commune health clinics/regional general clinics	<b>0.026</b>	<b>0.037</b>	<b>-0.010</b>	<b>-28%</b>	<b>0.004</b>	<b>0.020</b>
The number of inpatient visits at district hospitals	<b>0.060</b>	<b>0.038</b>	<b>0.023</b>	<b>60%</b>	<b>0.008</b>	<b>0.003</b>
The number of inpatient visits at provincial/central hospitals	0.035	0.038	-0.002	-6%	0.006	0.721
The number of inpatient visits at State hospitals	0.096	0.075	0.021	27%	0.011	0.065

Results presented in **Table 8** showed that people with free healthcare cards had much lower households' self pay medical costs than matched policy beneficiaries without cards, comprising of lower average costs, lower household costs, lower inpatient treatment costs, lower self-treatment costs and even lower ratio of people with health costs exceeding the health cost threshold of equal or higher than 20% of actual household costs (but not related to the upper threshold of 40%). Results on the use of services and

costs both indicated that Decision 139 helped decrease significantly the self pay costs while not much change in the use of healthcare services in general (i.e. there was a decrease of self pay costs on a service using unit)

**Table 8: Impact on self pay costs of households – Comparison A-cross-section data, comparison between policy beneficiaries with cards and without cards**

	Average of card-holders (VND)	Average of non card-holders (VND)	Difference between two averages (VND)	% difference	Bootstrapped standard errors	P-value
Annual actual per capita health expenditure	122,061	142,286	-20,225	-14%	12.597	0.108
Annual actual per household health expenditure	<b>615,193</b>	<b>757,514</b>	<b>-142,322</b>	<b>-19%</b>	<b>56.166</b>	<b>0.011</b>
Annual actual household expenditure on outpatient care	215,971	230,841	-14,870	-6%	25.490	0.560
Annual actual household expenditure on inpatient care	<b>247,785</b>	<b>338,748</b>	<b>-90,963</b>	<b>-27%</b>	<b>37.684</b>	<b>0.016</b>
Annual actual household expenditure on self care	<b>144,558</b>	<b>171,236</b>	<b>-26,678</b>	<b>-16%</b>	<b>12.307</b>	<b>0.030</b>
% of households spending too much on healthcare (20%)	<b>0.210</b>	<b>0.258</b>	<b>-0.048</b>	<b>-18%</b>	<b>0.015</b>	<b>0.002</b>
% of households spending too much on healthcare (40%)	0.074	0.072	0.002	3%	0.010	0.800

*Note:* Results with 95% confidence level are bold.

With regard to the analysis of living standards, the results presented in **Table 9** showed that there were no differences between actual per capita monthly income, actual per household monthly income, poverty rate or poverty gap indicator between policy beneficiaries with cards and policy beneficiaries without cards.



**Table 9: Impact on living standards of households – Comparison A - cross-section data, comparison between policy beneficiaries with cards and without cards**

	Average of card-holders (VND)	Average of non card-holders (VND)	Difference between two averages (VND)	% difference	Bootstrapped standard errors	P-value
Actual per capita monthly income (at price of January 2004)	193,174	193,468	-0,294	0%	3.913	0.940
Actual per household monthly income (at price of January 2004)	221,143	225,752	-4,609	-2%	4.559	0.312
Poverty rate	0.605	0.575	0.030	5%	0.017	0.075
Poverty gap indicator	0.191	0.201	-0.011	-5%	0.007	0.112

Results presented in **Table 10** of comparison A on panel data (policy beneficiaries with free healthcare cards compared with matched non-beneficiaries) were generally appropriate with the cross-section data results. However, because the sample size in panel data was fundamentally reduced, the estimate of treatment effect was not statistically meaningful in some cases. However, the replacement of outpatient visits at state healthcare establishments with outpatient visits at private health clinics was evident in the results of comparison A for both panel data and cross-section data. There was no difference of statistical meaning in inpatient treatment in the results of comparison A on panel data, which was not surprising because in panel data, the sample size was smaller and frequency of inpatient visits was quite low. Self pay costs for inpatient treatment increased dramatically, with the treatment group increasing less than the matched non-treatment group, yet all other changes in the households' self pay medical costs or the ratio of excessive health costs was of no statistic meaning. With regard to living standards, the only treatment effect of statistic meaning was average monthly per capita income increasing significantly, of which the treatment group increased less than the matched non-treatment group.

**Table 10** did not only examine comparison A between policy beneficiaries with medical cards and without cards but also examine comparison B (policy beneficiaries with cards compared with untreated beneficiaries) and comparison C (policy beneficiaries without cards compared with untreated beneficiaries). These different comparisons were conducted for both cross-section data and panel data.

Outcomes of comparison B were totally different from outcomes of comparison A. Outcomes from comparison B with statistic meaning indicated larger impact on the use of outpatient services at commune health clinics/regional general clinics than comparison A, yet with smaller treatment effect on the use of outpatient services at State hospitals. Treatment effect on the use of outpatient services at private health clinics was really lower than in comparison B. Comparison B revealed significant positive treatment effect on the use of inpatient services, with treatment effect on district hospitals larger than that in comparison A. Regarding the variable of self pay costs, comparison B showed that the treatment group had higher average annual per capital health costs but total health costs of the households did not increase. In comparison B, outcomes indicated that excessive costs in the treatment group were much higher.

Outcomes of impact in comparison C indicated that there was no treatment effect of statistic meaning on the use of services or self pay costs except for less use of outpatient services in district or state hospitals and less use of outpatient services at State hospitals. This outcome was appropriate with explanation that card possession was the exact criterion on whether or not a person benefited from the policy (i.e. estimates of treatment effect based on comparison A were fundamentally not deviated down).

In case of result variables of living standards (only reported for comparisons B and C in panel data analysis because the variables of income/spending were used in the estimation of propensity score for

comparisons B and C on cross-section data), the outcomes were not in line with outcomes of comparison A on panel data in terms of negative treatment effect on per capita household income with statistic meaning and positive treatment effect on the cases of falling into poverty and poverty line (though the latter impact only had statistic meaning in comparisons B and C). However, such treatment effect on living standards was contrary to expectations and it was difficult to explain.

**Table 10: Difference of average results between policy beneficiaries and non-beneficiaries in cross-section data and panel data analyses in 3 comparisons**

	<b>A- Cross- section data</b>	<b>B- Cross- section data</b>	<b>C- Cross- section data</b>	<b>A- Panel data</b>	<b>B- Panel data</b>	<b>C- Panel data</b>
<b>Result variables</b>	<b>% differ- ence</b>	<b>% differ- ence</b>	<b>% differ- ence</b>	<b>Differen- ce</b>	<b>Differen- ce</b>	<b>Differen- ce</b>
Number of outpatient visits	4%	13%	-8%	0,06	0,02	-0,06
Number of outpatient visits at commune health clinics/regional general clinics	<b>23%</b>	<b>66%</b>	8%	<b>0,10</b>	<b>0,16</b>	0,06
Number of outpatient visits at district hospitals	<b>85%</b>	54%	<b>-26%</b>	..	..	..
Number of outpatient visits at provincial/central hospitals	<b>74%</b>	43%	-4%	..	..	..
Number of outpatient visits at State hospitals	<b>82%</b>	<b>51%</b>	-18%	0,08	0,05	-0,03
Number of outpatient visits at private health clinics	<b>-38%</b>	<b>-30%</b>	-12%	-0,12	-0,18	-0,08
The number of inpatient visits	6%	<b>50%</b>	7%	0,00	0,05	0,01
The number of inpatient visits at commune health clinics/regional general clinics	<b>-28%</b>	12%	17%	0,00	0,01	0,00
The number of inpatient visits at district hospitals	<b>60%</b>	<b>73%</b>	-19%	..	..	..
The number of inpatient visits at provincial/central hospitals	-6%	65%	27%	..	..	..

The number of inpatient visits at State hospitals	27%	<b>70%</b>	-3%	0,02	0.05	0.00
Annual actual per capita health expenditure	-14%	<b>27%</b>	-9%	-2.950	-11.950	29.180
Annual actual per household health expenditure	<b>-19%</b>	17%	-13%	-52.060	-	59.200
Annual actual household expenditure on outpatient care	-6%	11%	<b>-25%</b>	55.070	-56.010	-43.870
Annual actual household expenditure on inpatient care	<b>-27%</b>	46%	-7%	<b>-134.55</b>	-88.160	150.380
Annual actual household expenditure on selfcare	<b>-16%</b>	0%	0%	19.370	-4.850	-43.730
% of households spending too much on healthcare (20%)	<b>-18%</b>	-3%	-1%	-0,04	-0,02	<b>0,07</b>
% of households spending too much on healthcare (40%)	3%	<b>92%</b>	10%	0,01	<b>0,06</b>	0,02
Actual per capita monthly income (at price of January 2004)	0%	NR	NR	-14.420	-19.89	-1.32
Actual per household monthly income (at price of January 2004)	-2%	NR	NR	<b>-19.300</b>	<b>-54.810</b>	-25.300
Poverty rate	5%	NR	NR	0,03	<b>0,18</b>	<b>0,10</b>
Poverty gap indicator	-5%	NR	NR	0,02	<b>0,05</b>	0,02

*Note:* NR=Non-reported because the income measure was used in logit analysis.

A number of outlier observations were identified in the initial examination of data but were not discarded in the main analysis, because there was no evidence to prove that they were due to survey errors or only a very abnormal case. Propensity score comparison is very sensitive to outlier observations in the case of untreated cases, because a number of values of the untreated cases could be used multiple times. As an examination to check the sensitivity of our analysis to outlier observations, we discarded all outlier observations that were discovered using the thresholds from VNHS data mentioned in the data description section and in Table 1. Changes in the variables used and self pay costs presented in **Table 11** were generally

insignificant and did not change the treatment effect direction. There was no change in the results on living standards, thus they were not included in the table.

**Table 11: Result differences when outlier observations are excluded  
 (Comparison A- cross-section data)**

Result variables	% differences in results	
	Outliers included	Outliers excluded
Number of outpatient visits	4%	5%
Number of outpatient visits at commune health clinics/regional general clinics	<b>23%</b>	<b>20%</b>
Number of outpatient visits at district hospitals	<b>85%</b>	<b>92%</b>
Number of outpatient visits at provincial/central hospitals	<b>74%</b>	58%
Number of outpatient visits at State hospitals	<b>82%</b>	<b>82%</b>
Number of outpatient visits at private health clinics	<b>-38%</b>	<b>-36%</b>
The number of inpatient visits	6%	2%
The number of inpatient visits at commune health clinics/regional general clinics	<b>-28%</b>	-24%
The number of inpatient visits at district hospitals	<b>60%</b>	<b>45%</b>
The number of inpatient visits at provincial/central hospitals	-6%	-13%
The number of inpatient visits at State hospitals	27%	17%
Annual actual per capita health expenditure	-14%	<b>-17%</b>
Annual actual per household health expenditure	<b>-19%</b>	<b>-20%</b>
Annual actual household expenditure on outpatient care	-6%	-7%
Annual actual household expenditure on inpatient care	<b>-27%</b>	<b>-30%</b>
Annual actual household expenditure on selfcare	<b>-16%</b>	<b>-14%</b>
% of households spending too much on healthcare (20%)	<b>-18%</b>	<b>-19%</b>
% of households spending too much on healthcare (40%)	3%	0%

*Note:* Results with 95% confidence level were bold

### 5.3. Discussion and conclusions

This study failed to find evidence on the increase of general use of inpatient or outpatient treatment as an outcome of the policy. However, the study found solid evidence on important changes in providers of healthcare services, which seemed to reflect the importance of healthcare quality or of self pay costs. For example, the study results indicated that Decision 139 only resulted in the movement in the use of outpatient services from private

providers to state providers at communal, district provincial/central levels. Though the “replacement impact” reduced the overall treatment effect of the policy on the use of healthcare services but it may improve the healthcare quality for beneficiaries of Decision 139 (for example, by moving from outpatient treatment provided mainly by private doctors to outpatient treatment at a better equipped State hospital). With regard to inpatient treatment, the study revealed that there was a movement from commune health clinics/regional general clinics to better equipped State hospitals.

There were evidences that the possession of free healthcare cards or health insurance cards for the poor provided financial protection to beneficiaries. Health costs in general in the treatment group were significantly lower than that of the matched non-treatment group. There were also evidences on the reduction of self-treatment costs, suggesting that when patients had more access to professionals, they would pay less for self-treatment (it seemed that healthcare quality and health results were improved). No significant difference was found in the costs of outpatient visits between the treatment group and matched non-treatment group, though the use of district hospitals and provincial/central hospitals by policy beneficiaries was more than that of matched non-beneficiaries. Regarding inpatient treatment, there were evidences on lower costs, despite the movement from commune health clinics and regional general clinics to more expensive district and provincial/central hospitals.

Results of excessive costs were mixed. While it was found in the cross-section data analysis of comparison A that the policy resulted in the reduction of excessive spending (but only with the threshold of 20% and no significant reduction in the corresponding panel data analysis), results of comparison B (possibly affected by poor balance of covariates and significantly trimmed sample) indicated that the treatment group suffered significantly higher excessive costs compared with the non-treatment group.

Impact on living standards in the comparison between people with cards matching with policy beneficiaries without cards (comparison A) was not presented. However, this treatment effect evaluation relied on the data collected during the second year of policy implementation, with the period covered by the question corresponding to the first year of policy implementation, thus no treatment effect of the policy on living standards was found which was not surprising.

#### **5.4. Discussion questions**

1. Could you please develop the theory on changes of or a series of results of the healthcare policy for the poor in the case study?
2. Could you please talk about the rules to determine the allocation of the policy or identify the conditions to benefit from the policy in the case study and how the allocation rules affect the selection of evaluation methods used in the policy evaluation in the case study.
3. What do you think are the data used in policy evaluation in the case study appropriate? Please explain your answer.
4. What do you think is the Regulatory Impact Assessment used for policy evaluation in the case study appropriate? Please explain your answer.

## **6. Materials**

### ***6.1. Required materials***

#### *Materials in Vietnamese*

- Nguyen Huu Hai, editor-in-chief (2002) Textbook on Public Policy Planning and Analysis, National Academy of Public Administration, Statistical Publishing House, Hanoi

- Le Chi Mai (2000), *Policy and Policy Process*, National Political Publishing House, Hanoi.

### *Materials in English*

- Shiroyama Hideaki (1998), *Policy Formulation Process at Central Ministries*. Material translated from Japanese (For internal use only)
- Thomas R. Dye, *Insights into Public Policies*, 14<sup>th</sup> edition, Material translated from English (For internal use only)

### **6.2. References**

- Le Vinh Danh (2001), *Public Policies of the United States*, National Political Publishing House, Hanoi
- Do Hoang Toan (1997), *Policies in Socio-Economic Management*, Science and Technics Publishing House, Hanoi

## **7. Teaching-learning form**

This course mainly focuses on case studies so as to help students not only acquire the theoretical knowledge, but also practical knowledge on public policies and policy process. The teaching method in this course is an active teaching method which centers on learners. Teachers are only the instructors while students are active in identification, analysis and solving of matters in the policy process.

## **8. Method and form of checking-assessing learning outcome in the course**

The final score of the course will be based on the following criteria:

- *Attendance and participation in class (10%)*: The score is given based on the adequate attendance and active idea contributions of students in class.
- *Discussion in class*: 10%



- *Final assignment (50%)*: The final assignment can be prepared under two forms as follows:
  - + The teacher gives out an actual situation and requires students to analyze that situation based on the answering of questions given by the teacher.
  - + Students select actual situations by themselves, describe and analyze factors affecting the results as well as making contribution to the success or failure of the policy in those situations, then withdraw the experiences/lessons or make recommendations.

# NAPA-JICA プロジェクト 公共政策修士教育プログラム

科目「公共政策プロセスにおける  
ステークホルダー分析」

ハノイ、2015年

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## 科目「公共政策プロセスにおけるステークホルダー分析」

### 1. 講師情報

科目担当講師の氏名： ディン・ティ・ミン・トゥエット (Dinh Thi Minh Tuyet)

役職・職位・学位： 准教授・博士・担当講師

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### 2. 科目概要

・ 科目名： 公共政策プロセスにおけるステークホルダー分析

・ 英語名： Stakeholder Analysis in the public policy process

・ 科目コード：

・ 単位数 (出席・実習・自己研究)： 02 単位

・ 授業等の時間配分

理論講義の受講： 15 コマ (1 単位)

授業時間内に行う課題とディスカッション： 6 コマ (0.3 単位)

実習とグループワーク： 10 コマ (0.3 単位)

自己学習： 12 コマ (0.4 単位)

(注：1 単位=理論講義の 15 コマ、1 コマ=45 分、理論の 1 単位=実習・ディスカッションの 2 単位)

・ 対象となる専門分野： 公共政策

・ 教育レベル： 修士

・ 授業形式： 集中授業・通信教育

・ 科目の種類： 選択

・ 必修科目： 公共政策入門

・ 事前修得科目 (本科目の修得に必要な基礎知識)： 公共政策入門、公共政策策定、政策評価

・ 同時修得科目 (あれば)：

・ 本科目の修得に必要なその他の事項： 理論講義と事例分析実習との組み合わせ

・ 科目担当部門・学科： 社会関連国家管理学科

### 3. 科目の目標

#### 3.1. 科目の全体目標

知識について

下記内容を提供することにより、合意分析における交渉理論の基本的知識および公共政策プロセスにおけるステークホルダーの関心（利益と損失）分析に必要な知識を学生が身につける。

- 交渉・合意・ステークホルダー及びステークホルダーの関与度・権限に関する基礎概念
- 公共政策プロセスにおけるステークホルダー分析・評価の各ステップ
- 公共政策プロセスにおけるステークホルダー分析・評価の基本内容
- 公共政策プロセスにおけるステークホルダーの関与度の分析・評価プロセスに適用する手法

#### スキルについて

学生が以下の手法・技術を使って、必要な情報を収集し政策プロセスの各段階における、ステークホルダーの関与度と影響度を評価できる。

- 合意分析における**交渉術**を明確化できる。
- 政策問題およびステークホルダーを分析し特定できる。
- 公共政策プロセスにおけるステークホルダー及びステークホルダーの影響度を特定できる。
- 公共政策プロセスにおけるステークホルダー分析のために適切なツールを適用することができる。

#### 態度について

学生が実際の公共政策におけるステークホルダーの研究・分析の重要性を理解し、ステークホルダー同士の関係に関する問題を管理・解決する適切な対策を積極的に見つけ、ひいては公共政策の成功に貢献する。

- 経済・社会の各活動の中で発生する政策問題のステークホルダーの関与について、関心を持ち理解する。
- 政策の策定と実施に関するステークホルダー分析に、適切なプロセスと科学的分析手法・ツールを意識して適用する。
- 公共政策の策定と実施におけるステークホルダーの関与を保障するために政策決定の権限を持つ主体の論証・説得に関心を持つ。

### 3.2. 科目の知識に関する具体的な教育目標

- 学生が**交渉理論**や各概念の体系、ステークホルダーの役割と関与度、ステークホルダー分析の必要性について明確に把握できるようサポートする。
- 公共政策プロセスにおける関与主体の権限や責任を明確化できる。
- 分析のための方法やツール・技術と同様、政策プロセスの各段階におけるステークホルダー分析のプロセス若しくは各ステップを説明できる。
- 公共政策プロセスにおけるステークホルダーの関与の評価目的・要求・基準・内容を明確化できる。

### 4. 科目内容の要旨 (理論と実習の主な内容を記載)

「公共政策プロセスにおけるステークホルダー分析」の内容は、交渉理論・ステークホルダー分析の基本内容を含み、4つの章から構成される。

第1章では、合意分析における交渉理論を総括し、考え方と利益の概念・合意と交渉・基本交渉術といった内容を含む。

第2章では、政策プロセスにおけるステークホルダーの概要を扱い、ステークホルダーの概念・分類、ステークホルダー関与の役割、政策プロセスにおけるステークホルダーの関与度や関与原則といった内容を含む。

第3章では、政策プロセスにおけるステークホルダー分析を行い、政策プロセスにおけるステークホルダー分析の概念と必要性、政策プロセスの各段階におけるステークホルダーの関与度、ステークホルダー分析の各ステップでのプロセス、ステークホルダー分析において使用される各手法といった内容を含む。

第4章では政策プロセスにおけるステークホルダーの関与を評価し、評価の目的と要求、ステークホルダーの重要性・与える影響の評価と評価方法に関する基本内容を含む。

## 5. 科目の詳細内容

	内容	理論	課題	ディスカッション	実習	グループワーク	自己研究
第1章	合意分析における交渉理論	3				2	3
第2章	公共政策プロセスにおけるステークホルダーの特定	4		2		3	3
第3章	公共政策プロセスにおけるステークホルダーの関与の分析	4		2		3	3
第4章	公共政策プロセスにおけるステークホルダーの関与の評価	4		2		2	3
合計		15		6		10	12

## 6. 学習資料

### 6.1. 必須資料

#### ベトナム語資料

- ・「公共政策プロセスにおけるステークホルダー分析の教科書」(編集集中)
- ・「公共政策の策定と分析の教科書」(2002年)、NAPA

#### 外国語資料

### 6.2. 参考資料

#### ベトナム語資料

- ・公共政策の基本的問題(2014年)、国家政治出版社
- ・公共政策分析の大綱(2013年)、国家政治出版社
- ・「付録A: ステークホルダーの関与」、TA7629-VIE河川流域水資源開発能力強化プロジェクト
- ・「計画・プログラム作成マニュアル」、ジュネーブ国際赤十字・赤新月社、2010年
- ・「ステークホルダーの十分な関与プラティス: 2011~HIV予防生物医学実験マニュアル」、UNAIDS
- ・GRIPS高田寛文教授の講義資料

- ・「決定的な交渉～良い結果を得るためのノウハウ」、Patterson, Kerry, Minh Hiếu 訳 (2009年)、世界出版社
- ・「交渉術」、Peeling・Nic, Khoa Nam 訳 (2009)、人民公安出版社
- ・「社会経済発展の原動力について」、Lê Hữu Tàng 主筆 (1997年)、ハノイ社会科学出版社

#### 外国語資料

- ・ Donaldson, T. and Preston, L. 1995. *The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications*. In *The Academy of Management Review*, 20(1), 65-91
- ・ Jawahar, I.M. and McLaughlin, G.L. 2001. *Toward a Descriptive Stakeholder Theory: An Organizational Life Cycle Approach*. In *The Academy of Management Review*, 26(3), 397-414
- ・ Kahn, J. 2004. *Local Politics of Renewable Energy, Project Planning, Siting Conflicts and Citizen Participation*, Environmental and Energy Systems Studies, Lund University
- ・ Mitchell, R.K. Bradley, R.A. and Wood, D.J. 1997. *Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What really Counts in the Academy of Management Review*, 22(4), 853-885
- ・ Olander, S. 2003. *External Stakeholder Management in the Construction Process*, Division of Construction Management, Lund University
- ・ Olander, S. and Landin, A. 2005. Evaluation of Stakeholder Influence in the Implementation of Construction Projects. *International Journal of Project Management*, 23(4), 321-328
- ・ Sternberg, E. 1997. *The Defects of Stakeholder Theory*. In *Corporate Governance: An International Review*, 5(1), 3-9
- ・ Winch, G. and Bonke, S. 2002. *Project Stakeholder Mapping: Analysing the interests of Project Stakeholders*, Chapter 23 in Slevin, D.P. Cleland, D.I. and Pinto, J.K. (eds), *The Frontiers of Project Management Research*. Project Management Institute Inc
- ・ Section 8. Identifying and Analyzing Stakeholders and Their Interests, Chapter 7, <http://ctb.ku.edu/en/table-of-contents/participation/encouraging-involvement/identify-stakeholders/main>

#### 7. 授業実施形式

- ・ プレゼンテーション
- ・ ディスカッション
- ・ 自己研究
- ・ 小論文の作成

#### 8. 科目学習成果の評価～試験手法・形式

評価・試験形式ごとの目標を分類した上、10点満点の採点基準で以下の項目を採点する。(それぞれの採点割合については講師の提案による)。

- ・ 態度・熱心さ：10%
- ・ グループディスカッション＋個人課題：10%
- ・ 中間テスト：30%
- ・ 期末試験：50%

## 詳細シラバス

### 第1章

#### 合意分析における交渉理論

##### 1.1. 利益の考え方

###### 1.1.1. 利益の概念

###### 1.1.2. 交渉における利益の考え方

##### 1.2. 交渉

###### 1.2.1. 交渉の概念と本質

###### 1.2.2. 交渉の分類

###### 1.2.3. 交渉の原則

###### 1.2.4. 交渉の方法

###### 1.2.5. 交渉の各段階

###### 1.2.6. 交渉の基礎技術

##### 1.3. 駆け引き

###### 1.3.1. 駆け引きの概念と必要性

###### 1.3.2. 駆け引きの共通的な特徴と条件

###### 1.3.3. 駆け引きの各段階

###### 1.3.4. 駆け引きにおけるツール

###### 1.3.4.1. BATNA (Best Alternative to a Negotiated Agreement)

###### 1.3.4.2. ZOPA (Zone of Possible Agreement)

### 第2章

#### 公共政策プロセスにおけるステークホルダーの特定

##### 2.1. 公共政策プロセスにおけるステークホルダーの概要

###### 2.1.1. 公共政策プロセス

- 政策問題の特定
- 政策の策定
- 政策の実施
- 政策の評価

###### 2.1.2. ステークホルダーの概念と分類

- ステークホルダーの概念
- ステークホルダーの分類

##### 2.2. ステークホルダーの関与

###### 2.2.1. ステークホルダーの関与の概念

###### 2.2.2. ステークホルダーの関与の役割

- 政策の発展と実現に向けた多くのアイデアを創出する
- 多様な考え方を結集する
- 多くの支援や努力を結集する
- 公平性と意見表明の機会をもたらす



- 起こりうる問題の回避策につながる
  - 反対が発生する際、主体組織の地位を高める
  - コミュニティーに社会資本を結集させる
  - 主体組織の威信を高める
  - 政策成功の確率を増加させる
- 2.2.3. ステークホルダーの関与度
- 情報提供
  - 参考意見
  - パートナーとして
  - 監督
- 2.2.4. ステークホルダーの関与の原則
- 相互理解と相互尊重
  - 総合性
  - 透明性
  - 責任と説明責任

### 第3章

#### 公共政策プロセスにおけるステークホルダー関与分析

- 3.1. ステークホルダー分析の概念
- 3.2. ステークホルダー分析の必要性
- 3.2.1. ステークホルダーの関心の特定
- 3.2.2. ステークホルダーの特徴と関与能力の特定と明確化
- 3.2.3. ステークホルダー間の関係の理解と評価
- 3.2.4. ステークホルダーとの連携関係の構築
- 3.2.5. ステークホルダーの適切な関与方法の評価
- 3.3. 公共政策プロセスにおけるステークホルダー分析の各ステップ
- 3.3.1. プロセスの計画作成 (Planning Process)
- 3.3.2. 1つの政策の選択と特定
- 3.3.3. 主要ステークホルダーの特定
- 3.3.4. 適切なツールの選択 (adapting the tools)
- 3.3.5. 情報の収集と記録
- 3.3.6. ステークホルダー表・マトリックスへの記入
- 3.3.7. ステークホルダー表・マトリックスの分析
- 3.3.8. 分析情報の使用
- 3.4. 政策プロセスにおけるステークホルダー分析
- 3.4.1. 政策問題特定におけるステークホルダー分析
- 3.4.2. 政策策定におけるステークホルダー分析
- 3.4.3. 政策実施におけるステークホルダー分析
- 3.4.4. 政策評価におけるステークホルダー分析
- 3.5. ステークホルダー関与分析の技術
- 3.5.1. SWOT 技術

3.5.2. 問題分析樹形図**技術**

第4章

公共政策プロセスにおけるステークホルダー関与評価

4.1. ステークホルダー関与評価の目的・要件・対象

- 4.1.1. ステークホルダー関与評価の目的
- 4.1.2. ステークホルダー関与評価の要件
- 4.1.3. ステークホルダー関与評価の対象

4.2. ステークホルダー関与評価の指標と**内容**

- 4.2.1. ステークホルダーの利益
- 4.2.2. ステークホルダーの権力（主催・関与・受益）
- 4.2.3. ステークホルダーの関心と主体性
- 4.2.4. ステークホルダーの齟齬・対立のコントロール
- 4.2.5. ステークホルダーの相互作用（関与度・関与形式）

4.3. 公共政策プロセスにおけるステークホルダー評価の**各ステップ**

4.4. ステークホルダー関与評価のツール

- 4.4.1. ステークホルダーの監督・評価計画
- 4.4.2. 特性要因図による分析
- 4.4.3. 結果による分析

4.5. 政策プロセスにおけるステークホルダー関与の評価**内容**

- 4.5.1. 政策問題特定におけるステークホルダー関与の評価
- 4.5.2. 政策策定におけるステークホルダー関与の評価
- 4.5.3. 政策実施におけるステークホルダー関与の評価
- 4.5.4. 政策評価におけるステークホルダー関与の評価

## 第1章 合意分析における交渉理論

我々は常に生活の中で合意達成のためにある程度、交渉をしなければならない。あらゆる分野や条件、場所、タイミング等で交渉が存在している。交渉は人間同士の情報交換プロセスの構築における積極的手段であると考えられている。

交渉が必要とされる場面は多くなってきている。だれもが自分自身に関係する決定プロセスに関わりたいと思うし、他の人によって決定されることをそのまま受け入れる人も少ない。大抵の場合、自分の納得する合意が得られるまで、交渉を通じて問題の解決を図る。交渉は日常的に行われているが、効果的に交渉を進めることは、とりわけ多くのステークホルダーが関与する公共政策プロセスにおいて、決して容易なことではない。

あるアメリカ人の専門家によれば、人間が関係を変えようと思い、自分の考えを他人と共有し、合意を達成しようとする時、それは交渉である。

また、ある中近東の学術者は「交渉は関係を拡大するまたは壊すものではなく、関係の新しい形態や違う関係を構築するためである」と発言している。

交渉は相違の解消を図る方法の一つである。これによって個人や組織は合意を達成し、論議と不和を避けることができる。しかし、公平性と共通利益の追求、そして関係維持こそ、交渉と合意がまとまるための重要な原則である。

### 1.1. 利益の考え方

#### 1.1.1. 利益の概念

カール・マルクスによると利益や利得、有利等の概念は同じ意味で互いに入れ替わることができる。利益は抽象的・主観的なものではなく、利益の基本は人間の客観的ニーズである。人間は様々なニーズ（物質的・政治的・文化的）を持っているため、利益の種類も様々である（経済的利益、政治的利益、文化的利益、精神的利益等）。

ニーズは人間の行動を促すとても重要な動機である。行動主体にとって、このニーズを満たすのは利益である。したがって、利益とはニーズを満たすもので、ニーズとの関係ではじめて利益を意味する。ニーズとの関係から切り離されると利益は利益ではなくなる。

本質的には利益とは主体を取り巻く外の世界の物事・現象と主体のニーズとの関係であり、内容的にはニーズを満たすあるいはニーズに応えるものである。

例：窓に関する論議～立場と利益 (M. P. Follett (1868-1933) )、 (“win-win” の一番最初の隠喩)  
ハーバード大学の図書館で、学生 2 人が言い争っていた。A 学生は窓を開けるべきだと主張し、B 学生は窓を閉めるべきであると主張していた。

Follett 教授は「なぜ窓を開けたい・閉めたいのか」と質問した。

A 学生は「ここは暑いから」と答えた。B 学生は「風でページが飛ばされてるから本が読めない」と答えた。

R. Fisher と W. Ury によれば、合意を達成するためには「立場ではなく、利益に集中するべきである」。立場は「できるかできないか」という判断（静的で非直線的）であるのに対し、利益は方向あるいは要望（動的で直線的）である。

#### <利益の見つけ方>

まず、交渉当事者の要求によって特定される立場の背景に利益が存在している。

- ・「なぜ」と質問する、「なぜ」と考える。
- ・心理的反応を抑える。
- ・立場は「単純」と「忠実」である。
- ・多くの利益を満たす解決策を探す。

例えば、ドアの近い部屋の窓を開ける。そうすれば、本のページが風に飛ばされないし、部屋が涼しくなる。ということはここでの利益の考え方は互いに利益が得られるということである。それぞれのステークホルダーは自分の考え方を持っているため、ステークホルダーのニーズを特定し、それぞれのステークホルダーのニーズを満たし、それぞれのステークホルダーが利益が得られるような解決策を見つけなければならない。しかし、現実では以下のような場面・ケースもある。

- ・現状に満足しているため、特定のステークホルダーが交渉に臨むニーズはなく、関心を示さない。
- ・特定のステークホルダーが他のステークホルダーよりも自分が優位に立っていると感じているため、できるだけ他のステークホルダーの譲歩を得ようとしてわざと交渉を無視している。
- ・特定のステークホルダーの考えでは交渉にすぐに関心を示すことは自分が弱い立場にあることを意味する。したがって、高い価値が求められる交渉のほとんどは、わざと交渉を遅らせるのも自然的に交渉の一環である。

上記のケースではそれぞれのステークホルダーのニーズについて理解を深め、ステークホルダーが交渉に臨む最大の原動力を提供する必要がある。

財政的効果や人材と技術の課題、（有形または無形の）その他の価値等、魅力的な動機（十分な量のあるニーズ）はそれぞれのステークホルダーの交渉への参加を促す最良の原動力となる。

### 1.1.2. 交渉における利益の考え方

#### ❖ 交渉における価値的要求の考え方

**価値的要求**とは最後まで価値・利益を追求する立場に基づく交渉の考え方で、相手の権利にお構いなく自分に最大の権利を得ようとする。交渉当事者は勝つためにあらゆるツール・手段を駆使する。

この考え方では交渉当事者が互いに依存し合うゼロサム（Zero – Sum）という状況を作ってしまう、ある当事者が勝てば他の当事者が負ける。

#### ❖ 交渉における価値創出の考え方

**価値創出**とは交渉当事者が自分の目標を達成し、価値・利益を得られるようにする交渉の考え方である。全ての当事者は一緒に価値を共有するまたは創出する。

この考え方では交渉当事者が互いに依存し合うゼロサムではなく、いわゆる「共通利益」（Mutual gains）あるいは「誰もが勝つ」（Win – Win）という状況につながる。互いに納得して、権利または新価値創出の成果を共有することによって、交渉当事者に利益がもたらされる。

#### <交渉で得られる一般的な結果>

・「両方が負ける」～この場合、両方が自分の必要としている・欲しがっている利益を得られない。

そうすると、次の交渉では、その交渉が気の進まない不愉快なものになってしまう。

・「どちらかが勝って、どちらかが負ける。」～交渉当事者が交渉で負けると、その当事者が必要な利益を何も得られないで交渉が終わってしまう。そうすると、次の交渉ではその当

事者が勝った当事者とのやり取りを断ってしまい、最終的にどちらも負けてしまうという確率が高くなる。

したがって、交渉で「どちらかが勝って、どちらかが負ける。」という状況を積極的に作るのはNGである。

- ・「両方が勝つまたは両方が利益を得る」～交渉に臨む時、「両方が勝つまたは両方が利益を得る」という状況になるように積極的に条件を整えることが重要である。そうすると当事者は気持ちがよくなり、次回の交渉には臨みたい意欲が湧く。
- ・「何も起こらない」～この場合、勝つ当事者も負ける当事者もない。



多くの交渉ではその結果が両者がともに勝つという結果になるよう、適切な姿勢と態度を示し、努力することが望ましい。

## 1.2. 交渉

### 1.2.1. 交渉の概念と本質

- ・ 交渉の概念

通常、互いに取引方法についてすぐに合意することはできない。その原因としては考え方の違いや立場・利益の対立等（例えば買う人は安く買いたいが、売る人は高く売りたい）が考えられる。交渉とは互いに納得できる取引方法を特定するためである。したがって、交渉の基本的な理由は自分のニーズを出来る範囲で満たすためである。

交渉についてはアプローチによって様々な考え方がある。

- ・ 通常理解では複数の当事者がその関係を調整しようと議論を重ね、合意達成を目指し、プロセスである。これは各テーマの議論が実際にまだうまくクリアできていなければ、交渉はまだ終了していない。
- ・ 交渉は共通利益と対立する利益を持っている複数の当事者が一緒に解決策を見つけるプロセスである。
- ・ 交渉はそれぞれの当事者が自分の利益を得るために、何らかの解決策に譲歩するプロセスである。

・交渉はステークホルダーによる自主的な参加が求められるプロセスである。ステークホルダーが交渉に臨むのはそのステークホルダーが問題の解決を要望し、交渉によってよりたくさんの利益が得られると信じているからである。

・ Joseph Bumer : 「交渉とは一人では解消できない分け隔てを複数の人がその解消を図るために行う議論のことである。」

・ Roger Fisher と William Rhy : 「交渉とは私たちが他人から欲しいものを得るための基本的な手段である。私たちと相手が共有できる権利も対立する権利も存在している場合、合意達成のために設計されたコミュニケーションプロセスである。

フランスの有名な交渉者であるフランソワ・ド・カリエール (Francois de Cailere) は 1716 年に「優秀なビジネス交渉者は草のように柔軟であると同時に石のような固い意志を持つ人でなければならない。素早い反応神経を持ち、相手の話を丁寧に聞き、相手に良い印象を与えなければならない。また、相手と論議し、相手が知らないと思われる情報をさりげなく教えることで相手をうまく説得することも大事だ。優秀な交渉者は相手の思うままにならない、あるいは相手の仕掛け罠にハマらないように自分を抑えることができ、軽率な発言をせず、主観的偏見に支配されない人でなければならない」と断言した。

このように交渉とは複数のステークホルダーが互いに解決したい特定の問題や取引したい特定の商品・サービス、あるいは互いに納得できる、Win-Win の解決策についての駆け引きである。

Win-Win とは交渉の根本的要素である。交渉当事者のうち、相手のミスを利用することが最大の目標であると考え人もいる。しかし、特定の当事者の権利が無視されれば、その当事者は交渉から撤退するであろう。皆が自分の権利を主張しようとしているが、決して交渉は競争ではない。交渉に臨むステークホルダーが要望することは自分のニーズを最大限に満たすことであり、立場を守ることあるいは相手に勝つことではない。これは私たちは交渉において、自分にとって最良の結果を求めるが決して相手に勝とうとして争うことではないことを意味する。私たちは自分を利益を追求するが他のステークホルダーも同じことをする。

交渉に臨むと、それぞれのステークホルダーは自分なりの目標を立てる。したがって、交渉当事者がある解決策に合意できれば、全てのステークホルダーはその解決策で多かれ少なかれ利益を得ることができる。どちらかの理解不足で（あるいは騙されて）合意達成になるのであれば、その解決策は長く続かないし、交渉当事者は長期的な関係を維持することはできない。

現実では交渉当事者が勝とうとして競争し、結果的には達成した合意は特定の当事者にしか利益をもたらさないケースもある。これは交渉当事者が長期的な関係に関心を持たない、あるいは当事者のうち、十分な時間を持たないもしくは交渉の結果がそれほど大事ではないと判断し譲歩してしまう人がいた時によく発生するケースである。ここでは以下のような特徴のある交渉に焦点を当てる。

- ・当事者全員が長期的な協力関係を守りたい。
- ・当事者全員が交渉に時間を充てる用意がある。
- ・交渉結果が当事者全員にとって重要である。

交渉は全員が納得できる解決策を通じて、利益の対立や考え方の違いを解消する方法である。

### <交渉の本質>

・交渉は問題を分析し解決する科学である。規則やルールを研究し、情報を処理し、交渉戦略を立てなければならない。また、コミュニケーション学や心理学、経済学、法学、財政会計学等の科学にも関連している。

- ・交渉はコミュニケーションに関する原則、手法、スキルを上手に使いこなす芸術である。

- ・交渉は合意達成に向けて、当事者がニーズと利益の考え方を絶えず調整するプロセスである。
- ・交渉は協力とコンフリクトとの表裏の関係を **Win-Win** という形で表したものである。
- ・交渉がうまく行っているかどうかの判断は目標や効率、関係等の各基準に沿って行わなければならない。

### 1.2.2. 交渉の分類

交渉は多くの場面に利用されている。特徴的な形式として、国際関係に関する交渉や法体系に関する交渉、政府間交渉、同業種の争いに関する交渉、国内的な問題に関する交渉等がある。交渉を分類するにはいくつかのアプローチがある。ステークホルダー分析の科目では立場に基づく交渉と利益に基づく交渉の2つに分類している。

#### ● 立場に基づく交渉

立場に基づく交渉では当事者が直接的な対立に焦点を当てるが、その対立の背景にある本当のニーズを探らない。結果的には全ての当事者のニーズを満たせる創造性のある解決策を見つけることはできない。

立場に基づく交渉は、以下のような場合であれば、適切なものである。

- ・交渉結果が交渉当事者にとって、それほど重要ではない。鉛筆やハサミ、カッター等の文房具を少し購入する時は、売る人の本当のニーズは何なのか探るのに労力を費やす必要もないであろう。
- ・交渉のテーマは複雑ではない。サプライヤーと注文の最小ロットを決めるのであれば、サプライヤーの要求を分析する必要はない。
- ・交渉の相手と長期的な協力関係を構築することは重要ではない。相手が重要な顧客でなければ、あるいは取引が一回のみであれば、両者の利益を満たす解決策を見つけることに気を配る必要はない。

立場に基づく交渉は時には競争的になり、ステークホルダーの関係に悪影響を与えてしまう。他方では立場の対立だけを考えると私たちは両者のニーズを満たせる解決策は存在しないと気付く。そのような解決策を見つけるには、交渉当事者は立場の背景にある本当のニーズ、すなわち立場の対立ではなく利益に重点を置く必要がある。

#### ● 利益に基づく交渉

利益に基づく交渉は本当のニーズ（本当の利益）に焦点を当て、本当の問題の解決を目指す。私たちは立場の対立に関する多くの解決策を見つけることができるかもしれない。これは利益に基づく交渉の原則であり、全てのステークホルダーが交渉で勝つための土台である。

以下のオレンジのケースは利益に基づく交渉の典型例である。

幼い姉妹がオレンジを巡って争っていた。二人とも「このオレンジは私のものよ」と言っていた。あなたは親の立場であれば、この争いをどのように解決するのか。

この姉妹の母親は仲裁に入った。姉妹の2人になぜオレンジを欲しがっているのか理由を聞いた。姉の方はオレンジジュースを飲みたいと答えた。妹は装飾用の花を作りたいからオレンジピールが欲しいと答えた。そうすると母親はオレンジの皮をむいて、オレンジジュースを作って姉にあげ、オレンジピールを妹にあげた。

もし母親は単純にオレンジを2等分にして姉妹に分けると当然、2人とも満足しなかった（二人ともオレンジの一個分が欲しがっている）し、彼らが得た利益も少なかった。姉妹のそれぞれの要望を正確に把握することによって、母親は良い解決策を見つけることができた。

利益に基づく交渉は交渉当事者にとってより良い結果をもたらすことができるが、立場に基づく交渉よりも実現しにくい。これは立場の背景にある相手の本当のニーズを探ると同時に、当事者全員に利益をもたらす創造性のある解決策を見つけなければいけないし、相手の協力と信頼を得なければならない。

### 1.2.3. 交渉の原則

#### 第1原則：交渉目標を明らかにする。

交渉を成功させたいならば、交渉目標を明確に科学的に特定し、自分の権利を粘り強く賢く守るとともに、具体的な状況に合わせて、柔軟で創造的な対応をしなければならない。

交渉は合意達成のための当事者による議論・合意プロセスであり、それぞれの当事者は自分の提案を出したり、相手の提案に譲歩したり、うまく行けば契約を締結するというプロセスであるため、一步も譲らず自分の権利を貫くものではない。したがって、交渉を成功させるためには万全な準備をして、交渉目標を立てて、相手を説得するために完璧な立論を準備し、自分の目標を粘り強く守る。

それから交渉当事者は臨機応変に行動し、相手の提案を分析し、その提案が当事者によりたくさんの利益をもたらせる優れた提案であれば、交渉成功という最終目標のために、相手の提案を受け入れなければならない。

#### 第2原則：自分の利益を守ることと相手との関係を維持・発展させることとの調和を図る。

交渉は共通利益も対立利益も持っている当事者が共通利益の拡大と対立利益の縮小、そして合意達成のために、意見を交換し、議論して相手を説得するプロセスである。当事者の誰もが相手に譲歩せず、自分の利益だけを考えていると合意達成は実現しない。成功であると思われる交渉は当事者の関係を維持しながら利益を確保するもののため、交渉は「協力」と「コンフリクト」との表裏の関係である。

#### 第3原則：Win-Win という基本原則を徹底する。

交渉は勝負ありのチェスゲームでもなく、相手を全滅させるまたは死に追い込むような戦いでもなく、互いに利益を得られるようにする活動である。したがって、自分の利益が最大限に確保できる範囲で当事者は自分の利益を守りながら、相手の最低限のニーズに応えないと交渉は決裂する。

#### 第4原則：交渉の評価に総合的基準を用いる。

交渉がうまく行ったかどうかという交渉の評価は特定当事者の予定目標の実現だけを基準にするのではなく、総合的基準を用いるべきである。

目標実現が交渉の成功・失敗を評価する最初の基準となる。交渉の結果を評価するには、交渉の最終的な結果が当初の目標を達成できたかどうか、実現度合いはどれぐらいなのかの基準を適用する。

それ以外に人材や機材、財政資源、時間等、コストの最適化という基準もある。

#### 第5原則：交渉は科学であると同時に芸術である。

以前、交渉は芸術に過ぎないという考え方であったが、20世紀以降、世界の研究者および交渉者は交渉が科学であると同時に芸術であることを全員認めた。

交渉は先ず、交渉当事者のために最適の解決策を見つけるという方針で、問題解決を体系的に



分析する科学である。この問題解決の分析は交渉開始から交渉終了まで表される。交渉の体系的性は交渉の全体にわたって一貫性が求められるところにある。

科学としての交渉は法学や会計学、財政学、確率統計学、人類学、文化学、コミュニケーション学等の科学に関連し、交渉当事者が全員の共通的部分を見つけ、交渉の結果を予測し交渉プロセスの適切な進め方を見いだすのを手伝う。

芸術としての交渉はコミュニケーションやプレゼンテーション、説得、説得の受け入れ、ストーリーの展開等に関するスキルでありながら交渉術を巧みに適時に効率よくを使いこなす能力である。

#### 1.2.4. 交渉手法

交渉はソフト交渉、ハード交渉と原則交渉の3つの基本的手法に分類することができる。それぞれの交渉手法には特徴がある。

内容	ソフト交渉	ハード交渉	原則交渉
相手	友人	敵視する相手	問題解決のために協力し合う関係にある相手
目標	合意達成と関係維持	勝つこと	スマートで効率よく友好的にを解決すること
出発点/譲歩	関係構築のための譲歩	関係維持のために譲歩を要求する	人間の要素を問題から切り離す/仕事と関係を分析し、譲歩する
態度	柔軟的	強硬	人に対しては柔軟的であるが、仕事に対しては強硬
信頼	相手を信頼する	相手を信頼しない	相手への信頼は交渉と関係ない
立場	立場が変わりやすい	立場を粘り強く守る	利益を重視（立場ではなく利益に重点を置く）
方法	提案を出す	相手を脅迫する	共通利益を探し求める
合意の条件	合意達成のための譲歩	自分の欲しいものが得られない限り合意しない	Win-Win
提案	相手が認められる案を探す	自分にとって有利な案を選ぶ	両者が選べるようにたくさんの案を出す

粘り強さ	合意達成のための粘り強さ	立場を守る粘り強さ	客観的基準の徹底への粘り強さ
印	コンフリクトを極力避ける	意志の力の競争	客観的基準に基づく合意達成
結果	相手の圧力に譲歩する	相手が受け入れるまたは砕けるまで圧力をかける	原則に譲歩するが圧力には譲歩しない

### 1.2.5. 交渉の各段階

交渉は通常、5つの基本的段階から構成されている。

#### 第1段階：準備

準備段階では先ず、交渉当事者は欲しがっているものと本当に必要とするものの区別をした上で、自分の目標を明らかにする。それから提案に必要な情報を収集し、相手のことを調べる。最後に、交渉団を発足させて、適切な交渉戦略・戦術を選んで、交渉の場所や時間、スケジュール等を決め、交渉スキルを磨き、資料を準備する。

交渉の前に、当事者は一般的に次の準備を行う必要がある。

- ・交渉前の情報
- ・交渉目標
- ・交渉テーマ
- ・既存データ
- ・交渉すべき問題
- ・力や知識、経験等、交渉すべき問題に関する相手の優位性
- ・適用すべき戦略・戦術：協力、妥協、和解、抑制、回避

#### 第2段階：情報交換

交渉は相手を探ることから相手と向かい合って交渉するまでのプロセスである。したがって、情報をたくさん持っている当事者は通常、より良い結果を得やすい。

この段階で交渉当事者は交渉テーマに関する情報を交換し、相互理解を構築し、相手の関心事を探り、交渉の結果を予測する。

この段階において、交渉当事者は情報を聞き出す能力や相手の話を聞く能力・観察能力、あるいは柔軟に物事を考える能力が求められる。

#### 第3段階：提案

この段階で交渉当事者は提案を出し、相手の反応を見る。相手の提案の内容を明らかにするために交渉当事者は質問をして、得た情報を集約して相手のニーズに合う対案を出す。この段階はこの後の駆け引きの土台作りという役割を果たす。

#### 第4段階：駆け引き

それぞれの当事者は相手の理屈と相手が望んでいる結果を自分の望んでいる結果と照らし合わせる。この段階では利益の交換が行われる。例えば、「もしあなたが・・・してくれれば、私が・・・してあげる。」というように、相手が自分のニーズを満たしてくれることと見返りに相手のニーズを満たすことを伝える。

### 第5段階：交渉終了

駆け引きで主な内容についての合意に達した交渉当事者は合意した内容をまとめ、まだ合意に達していない内容について解決策を探る。そして当事者のどちらかは最終的な提案を出す。相手がこの最終的な提案を受け入れれば、交渉当事者は契約を締結する。そうでなければ、何の合意も達成できずに交渉は終了してしまう。

(この部分についてはベトナム語的には違う表現を使っているが、1.2の「交渉」とは同じ意味であると思われますので統一的に「交渉」に訳出を変えました。なお目次では「駆け引き」をそのまま残していますが、元原稿での用語使いの違いがあることを説明するためです。

## 1.3. 交渉

### 1.3.1. 交渉の概念とその必要性

#### ● 交渉の概念

交渉とは対話を通じて人間が自分の持っているものと相手の持っているものと交換する、あるいはコンセンサスを得る手段であると定義することができる。「私はこれを持っているけど、あれが欲しい」というようなものである。

交渉は私たちのニーズを満たそうとするプロセスではあるが、私たちが欲しいものは相手がコントロールしている。典型的交渉は人質開放の交渉である。

合意形成には様々な交渉方法がある。

- ・配分型交渉はオレンジ1個を子供2人に半分ずつ分ける場合のような交渉である。配分型交渉ではゼロサム交渉のWin - Lose関係になるため、どちらかは満足するが、残りの人は満足しない。
- ・統合型交渉はプラスサムのWin - Win.関係を目指すための交渉である。

長期的な協力関係を築きたい賢い交渉当事者は統合型交渉を採用すべきである。

#### ● 交渉の必要性

ニーズや要望、目標、信念等の違いによって、人間同士のコンフリクトの発生は必然的である。交渉は存在しなかったら、これらのコンフリクトは言い争いや恨みになりかねず、結果的にはどちらかの当事者あるいは全員は不満を抱えることになる。交渉のポイントは将来の交換に障壁を作らずに合意を形成することである。

### 1.3.2. 交渉の共通的な特徴と条件

#### ● 交渉の共通的な特徴

- ・交渉はコンフリクトの解消方法の形成につながる。
- ・交渉の結果は当事者の合意や容認である。
- ・当事者は交渉しないよりも交渉した方がより良い結果が得られると期待する。
- ・交渉では当事者同士のギブ・アンド・テークが行われる。

#### ● 交渉の条件

交渉の条件はコンフリクトが発生していることである。当事者のニーズの違いによって、交渉の必要性が生まれる。交渉は以下のケースで行われる。

- ・争いが存在している
- ・争いによって被害が発生している。
- ・当事者は交渉結果について依存し合う関係にある。
- ・争いを解消する潜在的な機会がある。
- ・当事者がその意志（主観的・客観的）を持っている。

コンフリクトは頂点に達した争いであるが、その原因は複数の当事者のニーズ、権利、価値、信念等の違いによって当事者の願望が同じタイミングとレベルで満たされないことである。コンフリクトには4つのレベルがある。

- ・内心のコンフリクト（心理的コンフリクト）：アイディアや感情、価値要望、傾向等によって生まれる。
- ・個人と個人のコンフリクト：イデオロギー、考え方、生活習慣、権利、地位、やきもち、うらやみ等によって生まれる。
- ・グループ内のコンフリクト：同じグループに属する個人同士のコンフリクトで、分裂、派閥等につながり、家庭やクラス、部族、民族、宗教等の組織（グループ）の弱化・崩壊の原因となる。
- ・グループ同士のコンフリクト：一家または一族と他の一家・一族とのコンフリクト、犯罪集団同士のコンフリクト、国家間や民族間のコンフリクト

これらのコンフリクトの中では、グループ同士のコンフリクトが最も高いレベルのコンフリクトで、多くの社会的要因が絡み合うところであって、場合によっては戦争にエスカレートすることもある。例えば、長引いていたイスラエル人とパレスチナ人との戦争は民族間のコンフリクトでありながら、主教的コンフリクト（イスラム教とユダヤ教）でもある。ベトナム戦争、あるいは過去にあったアメリカンインディアンと欧州からやってきた白人とのコンフリクトもグループ同士のコンフリクトである。

● **コンフリクトの解消の範囲・レベル**

範囲	解決しにくい	解決しやすい
1. 論議内容	価値、信念、道徳、伝統等の原則的なテーマ	問題を細分化できる
2. 問題の危険度、重要性	広範囲、重大な結果をもたらす	小さい、結果が重要ではない
3. ステークホルダーの相互依存	ゼロサム (Lose – Win)	プラスサム (Win – Win)
4. 関係の連続性	一方的、一時的	長期的で持続的関係を目指す。
5. 交渉に臨む組織の構造	軟弱な組織構造、悪いリーダー	しっかりした組織構造、優れたリーダー
6. 第三者	存在しない、あるいは公平性に欠く	信頼できる中立的な第三者が存在している
7. コンフリクトと公平性に関する認識	認識のアンバランス：どちらかがいつも自分が不公平な扱いを受けていると感じている。	認識のバランス：善意的で寛大

例：バスターミナルや鉄道駅の物売りは、行ったり来たりする顧客に物を売っているが、通常リピーターの顧客を作ることには考えない。転勤や引っ越しに伴う住宅・自動車の売却も同じである。これらの商談は1回のみで、同じ顧客とで起きることの確率はゼロであるため、ゼロサム (Zero – Sum) 交渉となり、最大利益を得ようとして互いにだまし取ることもあり得る。

長期的な関係を維持することが望ましいと考える当事者の場合、コンフリクトの解消はもっと前向きで円滑なプロセスとなる。例えば、長年の顧客（戦略的顧客）との高額売買契約の締結を向

けて、交渉を進める場合、長期的で安定な利益を期待しているならば、販売側も購入側も相手を必要とする。この時、利益のコンフリクトが発生しても、両側の利益が相手の利益と依存し合う関係にあるため、合意は、一時的な関係の場合と比べて、より達成しやすくなる。

### 1.3.3. 交渉の各段階

何かの新しい事情が発生した時、ステークホルダー全員が参加できるミーティングを開催する。交渉は期待通りに結果を残せるように、準備、話し合い、目標の明確化、Win-Winの結果に向けた交渉、合意、そして合意した事項の実施といった各段階を経て行う必要がある。

#### 第1段階：準備

交渉の前に、交渉の開催場所、開催時間、テーマと参加者を事前に決める必要がある。また、交渉のタイムリミットをあらかじめ決めておくが良い。

この段階では交渉当事者の立場を明確に理解するための現状・事情の把握も含む。

交渉が始まる前に、事前に準備することで、交渉者の意見の相違がエスカレートすることを未然に防ぐことができ、交渉本番の時間を短縮することにつながる。

交渉の準備段階で、以下のことに注意する必要がある。

- ・自分の実力を評価する
- ・相手の実力について探る
- ・当事者のニーズを予測する
- ・状況を予測する
- ・交渉計画を策定する。
- ・交渉チームを発足させる

#### 第2段階：話し合い

話し合いの段階でそれぞれの交渉当事者のメンバーは議論テーマに関する見解を示す。

この段階における重要な能力としては「質問する」、「聴く」と「問題を特定する」である。

この話し合いで交渉の重要なポイントについての記録を取っておくと、その後に役立つかもしれない。意見の相違があると、人はつい話し過ぎてしまい、相手のことをあまり聴かないというミスががちであるため、「聴く」はとても重要な能力である。それぞれの当事者は自分の意見を述べるチャンスを同じくらい持っているからである。

話し合いの段階で以下のことに注意する必要がある。

- ・話しやすい雰囲気を作る
- ・相手の信頼を獲得する
- ・善意を見せる
- ・相手を探る
- ・交渉計画を修正する

#### 第3段階：目標の特定

話し合いの段階でそれぞれの当事者の目標や関心事、意見の相違に関する考え方等を明確に特定する必要がある。

また、優先順位に沿ってそれぞれの小目標をリストアップすることも有益である。これによって、全体的な目標を把握することができる。目標の特定は交渉の重要な部分であり、目標の特定ができないということは誤解を招き、有利な交渉結果の実現の妨げになる。

#### 第4段階：Win-Winの結果に向けた交渉

交渉プロセスはWin-Winの結果に集中するプロセスである。このプロセスを通じて、当事者全員は交渉に前向きな結果と自分の考え方が結果に反映されていることを感じ取る。

交渉を通じて必ずしも達成できるとは限らないが、Win-Winの結果は通常、最良の結果となる。交渉では代替案と妥協に気を配ることは必要である。妥協は常に当初の考え方の維持よりも、当事者全員にもっとたくさん利益をもたらす前向きな選択肢である。

この段階で以下のことに注意する必要がある。

- ・ 正確な要求を出す
- ・ 要求を修正する
- ・ 和気のある雰囲気を作る
- ・ 相手を説得する
- ・ 合意に導き、契約を締結する

#### 第5段階：合意

達成した合意は完全に公平であるとは限らない。合意内容によっては、有利な当事者、すなわちもっと多くの利益を得る当事者がいることもある。これはどちらの当事者が相手よりもっと強いBATNAを持っているか、あるいはもっと多くの情報を把握しているかによって決まる。ということ合意には当事者の一定の譲歩も含まれている。

それぞれの当事者の考え方と関心事が考慮されれば合意は達成できる。それぞれの当事者は受け入れ可能な解決策に向けて、前向きな考え方を維持することが重要である。それぞれの当事者がどんなことが決定されているかを把握できるように、合意事項は明確なものでなければならない。

#### 第6段階：行動

合意達成により決定されたことは実施しなければならない。

##### ● 交渉における留意事項

###### ・ 合意の失敗

もし交渉は合意に達成できなければ、もう一回ミーティングを開催する必要がある。ミーティングの再開は当事者の混乱と時間の無駄使い、そして将来の関係悪化を避けなければならない。再度開催されるミーティングで、交渉プロセスはもう一回繰り返す必要がある。この段階で代替案の検討や仲介役として新しいメンバーを交渉に参加させることも有益である。

###### ・ 非公式交渉

当事者が非公式交渉を行う必要な場面は少なくない。公式交渉では、異なる考え方が存在すると交渉自体がうまく進まないことがある。しかし、公式交渉の重要なポイントを記憶しておく、非公式交渉の場で、その記憶は役立つかもしれない。

どのような交渉であれ、最終的な結果に影響する重要な要因は態度、知識および対話スキルである。

##### \* 態度

全ての交渉は、それぞれの場面において、問題に対する態度および個人の性格に影響される。態度はそれぞれの個人的なニーズを結びつけるため、交渉はそれぞれの個人が自分の目標を示し、達成させようとする場ではないことを認識するべきである。交渉当事者の行為は交渉の特徴に影響されることがある。交渉ではある人は防衛的になり、（権力を持っている）ある人は恨みを覚えてしまうことがある。

それぞれの当事者は決意と忍耐および自尊心を持って、冷静で自分の感情を抑えることができる、謙虚で真っすぐな性格と豊かな創造性のある人でなければならない。

**\*知識**

知識が豊かであればあるほど（法律や経済、社会、外交、心理学、文化、風習、習慣等に関する知識）、交渉に有利である。

**\*対話スキル**

公式な交渉であっても、非公式な交渉であっても、あるいは対面交渉であっても、効率的な交渉を進めるには欠かせないものが対話スキルである。これらのスキルは「演説する」や「聴く」、**???**、「決断する」、「関係を構築する」、「問題を解決する」、「決定を出す」等である。

交渉の当事者は高い言語力を持って、意見の上手な表現、問題の明確な説明、用語の適切な使い方、相手の説得方法等を心得て、論拠で相手の主張を否定し、自分の利益を守らなければならない。

### 1.3.4. 交渉におけるツール

交渉を進めるために BATNA と ZOPA という交渉ツールを知らなければならない。

#### 1.3.4.1. BATNA

BATNA (*Best alternative to a negotiated agreement*)とは 1981 年に出版された「*Getting to YES: Negotiating Agreement Without Giving In*」の中で、Roger Fisher と William Ury によって開発された概念である。ベトナム語では「交渉に合意することに取って代わる、最善の代替案」、または「合意に向けた最善の予備方策」と訳されている。本質的には BATNA とは交渉当事者は合意が決裂した時、何が起こるのか予測するものである。

BATNA は合意に到達しない場合、当事者が何をするのかを説明するために使われている用語である。合意に到達しない場合、当事者はどんな案を受け入れることができるのかを考えなければならない。交渉のどこかの時点で、ある当事者は合意するかもっと魅力的な選択肢を追求するかという選択に強いられることになる。

交渉の当事者は自分の目標を実現するために、前の案で相手を説得できない時に備えて、複数の代替案を用意しなければならない。最善の代替案 (BATNA) を持っていれば、当事者は最小の代償で期待の目標を実現することができる。強い BATNA を持っている当事者は交渉において、より有利になる。

合意達成できない時の最優先事項として、BATNA は重要なツールである。当事者は常に自分の BATNA を改善し、相手の BATNA を特定し、弱める必要がある。すなわち、「彼を知り、己を知れば、百戦して危うからず」という。

BATNA とは何なのか下記の例で説明する。

ある会社の採用面接を受ける人のことを考えよう。面接を受ける人は面接者がどのレベルの給料をオファーしてくれるか分からない。そうすると、戦術として自分の本当のニーズよりもかなり高いレベルの給料を提案するが、その前に自分が納得できる給料の額をあらかじめ設定しておく。これは BATNA 1 である。面接者が BATNA 1 の額をオファーしてくれないという最悪の場合に備えて、その人はその会社の正社員ではなく、仮にパートとなるという BATNA 2 を設定することもできる。

BATNA を特定することによって、それぞれの当事者は交渉の目標と限界を正確に把握でき、交渉を打ち切るべきタイミングを知ることができる。

それぞれの交渉者の BATNA を特定するには、最も重要なのは自分が相手よりも強いところは何なのか、相手の要望は何なのか、自分の本当の要望は何なのか、自分の持っている BATNA が相手にとって利益となるということを証明するための論拠は何なのか等、自分と相手进行评估することである。

自分の BATNA を特定することはあくまでも交渉の一部に過ぎず、プロフェッショナルの交渉者はそれよりも、相手の BATNA を特定しなければならない。自分の BATNA が強い（有利である）ため、相手を説得できることは言うまでもないが、自分の BATNA が弱い時、立場を強化するためには「自分の BATNA を改善する」、「相手の BATNA を特定する」と「相手の BATNA を弱める」という3つの潜在的アプローチがある。

● BATNA によって、交渉において次のような関係が発生する可能性はある。：

・ 独立的関係：当事者は互いに依存せず、価値の要求をすることにおいては同じ優位性を持っている。

・ 完全依存の関係：ある当事者は相手に完全に依存する。

例えば、長い期間にわたって失業していた人は給料や勤務時間、仕事の性質等の面において、雇用者に完全に依存する。あるいは消費者が独占販売業者（ベトナムの電力会社や石油製品の販売会社等）から商品やサービスを購入する場合、依存度は高く、販売業者は自由に価格を設定することができるが、消費者は交渉する余地は全くない。

・ 相互依存の関係：当事者は利益を追求する上、互いに依存し合う。

例えば、ある国家レベルの投資プロジェクト管理委員会は多くの技術・経済分野の専門家から構成されているが、どの専門家でも一人で自分の業務を遂行するための十分なスキルや経験、権限等を持っていない。彼らは互いに依存し合い、ある人の成功には必ず他の人が貢献しているという状況である。

BATNA を持っていれば、相手が自分の提案を受け入れてもらえなくても当事者は目的が達成できたと感じる。より大事な交渉であればあるほど、当事者は心理的にも戦略的にも BATNA を必要とする。

・ BATNA は交渉において行動の方向性を示すものである。

・ 自分の BATNA を知ること：合意に到達できなければ、何をすべきかあるいは何が起こるのか分かる。

・ BATNA で利益にならない相手の提案を断るタイミングは分かる。

・ BATNA を持っていなければ、交渉者は交渉が利益をもたらすかどうか、いつ相手の提案を断るべきか分からない。自分の BATNA をよく知らなければ、交渉はしない方が良いということである。

BATNA を特定する時、以下の3の質問に答える必要がある。

・ 交渉が終了したらどうすれば目標を実現できるのか。→違う相手を探さないといけない時もある。

・ どうすれば相手の協力を得て目標を実現できるのか。

・ 交渉が決裂したら弁護士や仲裁者等の第三者の協力を求める必要があるのか。

● 「自分の BATNA を強める」

・ 様々な状況に備えて、多くの BATNA を用意する。

・ 相手の BATNA を探り、タイムリーに的確に対応する。

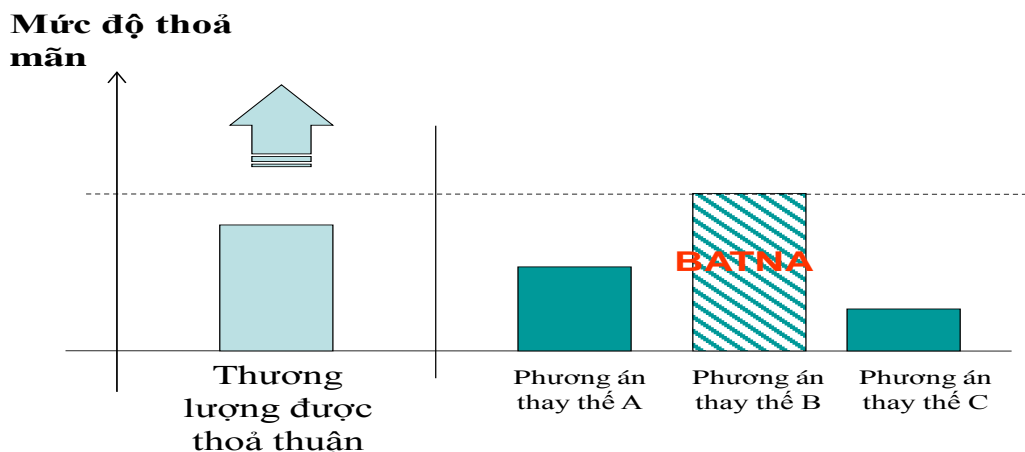
・ BATNA を強めると、より主導権を握り、相手の戦術に対応できるため、交渉でより有利になる。



- ・代替案の中ではBATNAは最善である。
- ・常にBATNAを意識して交渉を進める。
- ・BATNAは交渉当事者の限界点である。

BATNAが交渉中の合意内容と比べて悪いものであれば、その合意を目指して交渉を続けた方が良い。もしBATNAが交渉中の合意内容と比べて良いものであれば、交渉をあきらめて、BATNAに従う。

## BATNA trong một sơ đồ



交渉中の合意内容を客観的に評価し、感情的な反応を避け、相手にとっての脅威（良いBATNAを持っている場合）をほのめかす手段であるため、交渉当事者は自分のBATNAを知るべきである。

### BATNA と交渉の原動力

単一の問題に関する合意においてはその合意は2つのBATNAに挟まれる領域を巡る戦いである。

- ・ Win-Lose 合意、ゼロサム合意
- ・ パイを巡る競争
- BATNA の動的利用方法
  - ・ 自分のBATNAを正確に評価する
  - ・ 自分のBATNAをできるだけ改善する。
  - ・ 相手のBATNAを特定する。
  - ・ 相手のBATNAを無効化する。
  - ・ 他の当事者がそのBATNAについて非現実的な評価をさせない。

### 1.3.4.2. ZOPA

ZOPA (*Zone of possible agreement*)、すなわち「合意可能領域」はそれぞれの当事者が合意できる限界の重なる部分で、そこで複数の当事者の合意が発生する可能性のある領域である。つまり、複数の当事者にとって、合意できる案が集まる領域である。ZOPAが存在しないと、交渉は難航する。

例えば、洋服を店で買う時、買う人は X ブランドの服であれば 120 万ドルを払っても良いと考えているのに対し、売る人は 100 万ドルであれば売っても良いと考えている。この場合、100 万ドル~120 万ドルまでの領域は ZOPA である。

この ZOPA の特徴というのは、決定が発生すればその決定が全ての当事者を満足させることができる決定となる。上記の例で言えば、買う人にとっては自分の考えていた価格よりも安く購入できる、売る人にとっては最低価格よりも高く売れることになる。

現実的には、交渉の中で ZOPA が存在しないケースもある。上記の例で言うと売る人は最低でも 100 万ドルで売りたいのに対し、買う人は 80 万ドルまでしか払えない。買う人を満足させる価格帯と売る人を満足させる価格帯は重ならないため、ZOPA は存在しない。

ZOPA が存在しない時、代替の BATNA を特定する必要がある。上記の例で言えば、売る人は「80 万ドルではだめですが、もし Y 商品も併せてご購入であれば、Y 商品の割引をさせていただきます」と提案することができる。

ということで ZOPA は複数の当事者を満足させる合意が発生できる領域・レベルである。

BATNA は ZOPA のベースとなる。

それぞれの当事者の代替案よりも多くの利益をもたらす潜在的な合意があれば、ZOPA は存在する。

例えば、自分用の車を 5000 ドル以下で買いたい人と 4500 ドルで車を売りたい人がいれば、この 2 人は ZOPA (4500 ドル~5000 ドルの価格帯) を形成している。しかし、売る人は 7000 ドル以下では売らないのに対し買う人は 5000 ドル以上では買わない場合、この 2 人は何の ZOPA も形成していない。

ZOPA は合意達成に重要であるが、ZOPA が存在するかどうか特定するのは時間がかかる。交渉当事者は BATNA を通じて互いの利益を探り出すことができない限り、ZOPA は存在しない。

ZOPA を特定できることは当事者にとって合意形成の良い機会である。ZOPA が存在しない限り、合意の余地はない。

## 第2章

### 公共政策プロセスにおけるステークホルダーの特定

#### 2.1. 公共政策プロセスにおけるステークホルダーの概要

##### 2.1.1. 公共政策プロセス

公共政策プロセスについては様々なアプローチがあるが、ステークホルダー分析の科目では次の5つの活動・ステップからなる公共政策プロセスを使用する。

##### ● 第1ステップ：政策問題の特定

このステップは問題を認識し、政策問題を特定し議題に盛り込む。

- ・問題の枠組み：問題を特定するにはどうすれば良いか、その問題を次のステップでどのように解決するのか。
- ・問題は現状と理想とのギャップ（逸脱）で認識される。
- ・問題の特定は現状が物事の理想的なあり方から外れているという発見に基づいて行われる。問題の特定は自ら行うこともあるし、上司の指示に従って行うこともある。
- ・政策問題が明らかでない場合、政策が何のために何をしなければならないのか不明確のため、問題の特定は重要である。
- ・政府の議題というのはどの問題に関心を示すべきかを定めるものである。
- ・議題の主体は国家行政の仕事をする人は中心となるが、その人たちだけとは限らない。
- ・議題の決定には内部決定と外部決定がある。
- ・議題における課題と提案

##### ● 第2ステップ：政策策定

政策策定のポイントは議題の問題を特定し、複数の政策代替案を提案するプロセスにある。政策策定の主体は高級公務員が中心となるグループであるが、全員が高級公務員であるとは限らない。もちろん中堅公務員（mid-level managers）も重要である。

データや現場での面接、理論、事例研究等を通じて政策問題に関する重要な情報を収集し、これらの情報の分析・総括を通じて問題・現状を的確に把握し、問題を構造化する。

政策提案とは政策アイデアを提案し、政策とその実施手段（どの政策をどのように実施するのか）を選定する作業である。

例えば、政策策定の能力向上のための政策提案：

- ・政策目標の明確化
- ・政策目標の矛盾が存在する場合もある。
- ・実施の際に注意すべき点を考えながら政策代替案を策定する。
- ・これらの政策代替案を選定する。

政策骨格の検討や政策代替案の立案、政策の具体化等は優秀な政策立案者と問題意識および十分な情報量を必要とする。

- ・政策代替案の立案；問題に関するアイデアや仮説、政策の基本的な考え方等を提案し、将来の実施可能性について検討する。
- ・政策立案の考え方や政策問題との一貫性（logic）、現実的有用性、その他の要因や実施における問題（障壁）等について、政策代替案に対する事前評価を行う。
- ・必要となるステークホルダーのコンセンサスや調整方法、情報と能力の検討を通じて政策代替案の内容を調整する。

### ● 第3ステップ：政策決定

政策決定とは現状維持も含めた、複数の政策代替案から一つの政策を選定する一連の行動である。政策決定の主体は管理職と技術職の高級政治家である。

- ・ 政策決定モデル
- ・ ステークホルダーの調整
- ・ 政策決定の提案
- ・ 政策決定基準の構築
- ・ 標準プロセスの構築
- ・ 政策代替案の影響評価
- ・ 政策代替案の比較

不確実な情報や推測に基づく政策決定は批判される恐れがあるため、政策決定者は問題をしっかりと把握し、政策代替案の立案・調整を行い、優れた政策を決定しなければならない。

### ● 第4ステップ：政策実施

政策実施とは政策プロセスにおいて、決定された公共政策が行動に移るステップである。このステップは政策の成功・失敗を決定する。それまでの政策立案プロセスの中で存在する欠点は必ずここで表面化する。

施策実施の主体：行政機関はこのステップを実施する主体であるが各対象グループは実施プロセスにおいて主要な役割を果たす。

- ・ 政策プロセス全体における合成
- ・ 政策の方向と実際の結果とのギャップ
- ・ ボトムアップとトップダウンのアプローチ

実施段階における政策調整：実施者は政策目標を明確化し調整する。また、代替案も決定する。

### ● 第5ステップ：政策評価

政策評価とは様々な主体は政策が実際にどれだけ成功したのかを明らかにし、将来どのように実施されるのかを予測するための全ての行動をいう。

政策評価の主体は行政機関の内部者または外部者である。

- ・ 内部評価：所管省庁の各機関が政策実施を担当するが、他の省庁の機関が政策を評価する。
- ・ 外部評価：研究機関や政策シンクタンク、メディア機関、サービス利用者等
- ・ 政策評価のレベル：事業？実施？
- ・ 政策評価の形式：プロセス、努力、実施、効率・効果
- ・ 政策評価に必要な情報・データ
- ・ 政策評価のアウトプット：成功したのか、修正するべきなのか、さらに完成させるべきなのか。新政策立案へのフィードバック

#### 2.1.2. ステークホルダーの概念と分類

##### ● ステークホルダーの概念

世界銀行（WB）の定義によれば、ステークホルダーとは特定のプロジェクトや政策によって利益を受ける、または損害を被る人たち、あるいはそのプロジェクトや政策のアウトプットに影響を与えることができる人たちのことをいう。

行政の決定事項や事業の結果が自分の生活や権利に直接に影響を与えることから、ステークホルダーはこれらの結果に関心を持っている。

その目的と機能および責務から考えると、政府もステークホルダーである。ステークホルダーは政府の特定分野に関する政策に関心を持ち、その政策に影響を受けるグループであると理解しても良い。

**Một bên liên quan là bất kỳ thực thể có một sự quan tâm khai báo hoặc có thể tương tượng hoặc cổ phần trong một chính sách quan tâm. Phạm vi của các bên liên quan để xem xét để phân tích thay đổi tùy theo sự phức tạp của các khu vực cải cách nhằm mục tiêu và các loại hình cải cách được đề xuất và nơi các bên liên quan không được tổ chức, khuyến khích bao gồm chúng.**

ステークホルダーは進められている政策に関する利益のある個人、グループまたは団体である。ほとんどの場合、ステークホルダーは以下のうちの一つまたは複数のグループに当てはまる。

- ・個人・グループ・国際機関（ドナーなど）
- ・政治家（法律立法者等）
- ・公的部門組織・機関（法律執行者等）
- ・利益団体（業界団体等）
- ・NPOやNGO、社会団体
- ・労働者、利用者、消費者およびその団体

すなわちステークホルダーとは利益関係のあるグループであると解釈できる。

#### ● ステークホルダーの分類

ステークホルダーは次のように分類できる。

- ・ステークホルダーの特徴に基づく分類
- ・ステークホルダーの影響度・影響範囲に基づく分類
- ・ステークホルダーの影響の性格に基づく分類

#### **第1に、ステークホルダーの特徴に基づく分類である。**

ステークホルダーはその特徴に基づいて、以下のように分類できる。

- ・一次ステークホルダー（primary stakeholders）
- ・二次ステークホルダー（secondary stakeholders）
- ・主要ステークホルダー（key stakeholders）

主要ステークホルダーは通常、以下を含む。

**<政府職員と政策立案者>**：これらのステークホルダーは法律、その他の関係規定の立案、承認と実施を行う人たちである。正式には彼らは権力を持たないが、本当の権力者の「アドバイザー」として、その意見・発想は通常注目されている。

**<他人へ影響を与える手段と人々>**：これらのステークホルダーはメディア機関や自分の影響力を広げることのできる住民（例えば、説教師、医師、会社社長等）、あるグループをずっとリードしてきた人、あるいは長年・生涯に渡ってある地域にずっと住み着いている人、すなわち公正性とコミュニティへの貢献でコミュニティの信頼を得ているコミュニティリーダー等である。

**<特定の政策や事業、プロジェクト等の成果に関心を持つ人たち>**：これらのステークホルダーは政策や事業、プロジェクト等の成果に影響されなくても、政策や事業、プロジェクト等に関与しなくてもその成果に関心を持つ人たちであるため、政策や事業、プロジェクト等の成果に何らかの形で影響できるように努力する用意がある。

#### **第2にはステークホルダーの影響度と影響範囲に基づく分類である。**

ステークホルダーはその影響度と影響範囲次のように分類できる。

- ・主要ステークホルダー：計画業務・計画等の直接的な影響を受ける人たちである。例えば、河川流域の計画の場合、主要ステークホルダーは河川で事業を行う運送業者や排水を排出する企業等の河川の直接利用者、あるいは水質・流量に影響される人たち（災害の影響を受けやすいコミュニティーや水産物の養殖業を営む農家）である。貧しい地域では社会分析に基づき、それぞれ性別や階層、所得、職業、サービス利用グループ等で主要ステークホルダーを分類する必要がある。多くの計画では主要ステークホルダーは互いに重なる場合がある（例えば、女性と低所得者の場合、あるいは少量利用者と少数民族の場合）。
- ・サブステークホルダー：計画業務・計画等の間接的な受益者である。例えば、NGO、研究所、大学、法律事務所、中央省庁等。

### 第3にはステークホルダーの影響の性格に基づく分類である。

ステークホルダーの影響の性格に基づく分類では以下の2つのタイプのステークホルダーがある。

- ・直接的なステークホルダー、「見えるステークホルダー」(visible)ともいう。
- ・間接的なステークホルダー、「隠れたステークホルダー」(hidden)ともいう。このタイプのステークホルダーは見落とししやすい。

様々なアプローチがあるため、ステークホルダーの分類はあくまでも相対的な分類に過ぎない。それぞれの政策にはそれぞれ異なるステークホルダーがある。しかし、政策プロセスにおける代表的なステークホルダーを特定することはとても重要である。

どの政策プロセスでも全てのステークホルダーに関連付けを行う必要はない。政策に影響を与えるまたは影響されるステークホルダーであると区別できる。社会構造における位置づけや影響度の優先順位等で分類することが望ましい。

## 2.2. ステークホルダーの関与

### 2.2.1. ステークホルダーの関与の概念

「ステークホルダーの関与」とは最善の結果という目標のためにドナー、支援機関と実施機関が透明性と意義のある関係を構築し、問題に関心を持っているまたは影響を受けている個人、グループ、団体等と連携し、利益を分かち合うプロセスをいう。

ステークホルダーの関与は政策プロセスに関するステークホルダーの理解・認識の活用促進を目的とする双方向の連続的コミュニケーションであると考えられる。これにより、政策問題の最善の解決が図られる。

コミュニケーションの双方向は政策プロセスの主体（政策の立案者、実施者、評価者）からステークホルダーへのコミュニケーションとその反対のコミュニケーションである。

### 2.2.2. ステークホルダーの関与

事業や政策におけるステークホルダーの関与は関与主体に重要な優位性をもたらす。

#### ・ 政策の発展と実現に向けた多くのアイデアを創出する

一つの組織、あるいは一つの小さなグループだけよりも多くのステークホルダーを巻き込んだ方が事業と政策の発展・実施に関する多くのアイデアを創出する。

#### ・ 多様な考え方を結集する

影響を受ける全ての業種、分野とコミュニティーから多様な考え方を結集し、社会的背景と落とし罠・課題および潜在的な資源についての明確な全体像を描く。

#### ・ 全ての支援と努力を結集する

ステークホルダーを計画立案、実施と評価における必要な不可欠の存在とすることで全てのステークホルダーの支援と努力を結集する。そうすれば、ステークホルダーは最大限に努力する。

- **関与するステークホルダーに公平性と意見表明の機会をもたらす**  
関与するステークホルダー全員に公平性と意見表明の機会をもたらす。

- **起こりうる問題の回避策につながる**

ステークホルダーが一緒になると、障壁・課題として浮上する前に関心事を発見し、その対応を図ることができる。これらの問題を解決するということに至らなくても、既に予見しているため、びっくりさせられることはない。

- **反対が発生する際の主体組織の地位を高める**  
全てのステークホルダーが団結すると大きな政治力と道徳力となる。

- **コミュニティーに社会資本を結集させる**
- **主体組織の威信を高める**
- **政策成功の確率を増加させる**

### 2.2.3. ステークホルダーの関与度

ステークホルダーの関与度は単なる情報提供から実施業務に対する全権の付与までの目的によって、異なる。

- **情報提供**

ステークホルダーは政策に関する情報提供を受ける。

- **参考意見**

政策の立案、実施、分析及び評価においてステークホルダーの参考意見が求められる。

- **パートナーとして**

ステークホルダーは政策プロセスの各段階に関する問題についての意識決定に関与する。

- **監督**

ステークホルダーは政策プロセスの各段階の監督に関与するあるいは直接その監督を行う。ステークホルダーの関与度は政策プロセスに対するステークホルダーの関心度・影響度で評価できる

### 2.2.4. ステークホルダーの関与における原則

以下で説明する、ステークホルダーの完全な関与に関する原則はドナーや支援機関、実施機関が推奨すべきステークホルダーとの積極的な協力関係・Win-Win関係の基礎的な価値観を反映している。これらの価値観はパートナーシップの持続性と特定された共通目的の実現の土台となる。

- **相互理解・尊重**

持続的パートナーシップの構築とステークホルダー間の協力・連携は政策、事業、プロジェクトの立案と実施において最も重要である。

良好なステークホルダー関与を実現するためには業務実施の背景と関連のあるパートナーに関する多面的かつ広範囲で総合的な理解が必要である。

ステークホルダーが互いを尊重することは共通的な目的の達成に必要とされる効率的な情報交換、信頼の強化とパートナーシップの構築にとって重要である。相互尊重は互いの考え方と実践的価値を尊重する方法でそれぞれのステークホルダーが情報交換を行い、行動することで示される。

### ● 総合性

ステークホルダーの関与は潜在的なステークホルダーの特定に関する総合的な考え方から始まる。ステークホルダーや利益、優先する選択肢、考え方、その他文化的な側面等は時間と共に変化するため、ステークホルダーの特定は動的プロセスである。

目標と目標達成のための方法に関する共通理解はステークホルダー間の効率的な協力関係に必要である。そのためにはそれぞれのステークホルダーは社会・経済問題と業務実施プロセスに関する能力を構築しなければならない。それぞれ異なるステークホルダーの初期能力はそのステークホルダーが具体的な文化・社会環境との接触によって異なる。

社会・経済問題に関する能力は関連の地域文化における習慣、慣例と信念、社会経済状況、そしてコミュニティーにおけるパートナーの多様な考え方、優先事項と業務実施のニーズに関する理解を含む。

社会・経済問題に関する能力を構築することはそれぞれの優先事項を持つステークホルダー間の協力を促進し、その内容を合理的な業務実施プロセスの設計に反映することにつながる。

### ● 透明性

それぞれのステークホルダーはそれぞれの考え方を持っている。ステークホルダー間の利益競争や権力のアンバランス、社会団体の相違、上下関係、性差別の問題、社会経済状況等によって、活動の中で分裂または対立が生まれる可能性がある。ステークホルダー間の反対意見・対立が生まれる時、業務実施プロセスの全ての側面をコントロールするにはこれらの問題は忠実性、透明性、相互尊重および他のステークホルダーの平等な参加を確実なものにする方法で解決されなければならない。

オープンで忠実でかつタイムリーで明確な情報共有は関係の透明性を高め、建設的な協力関係・信頼関係の構築促進につながる。

業務実施プロセスおよびステークホルダーの役割における透明性は必要不可欠である。透明性はステークホルダー全員が業務の目的および業務実施プロセスに関する、オープンで忠実で分かりやすい情報の入手を確実なものにすることであり、一つのステークホルダーあるいは複数のステークホルダーからのフィードバックの受け止め・対応を確実なものにすることでもある。

ステークホルダーの役割に関する透明性はそれぞれのステークホルダーが自分の役割とそれに相応しい責任および彼らが代表する住民グループ、そして彼らの貢献が実施する業務に関連する決定に影響を与えかねないことについての理解を確実なものにすることである。

透明性を守ることはそれぞれのステークホルダーが協議や参加、協力と意思決定に関する合意レベルに影響を与えかねない状況について情報交換を行うことである。

### ● 責任と説明責任

説明責任とは信頼と相互尊重に基く関係を維持するための基本となる。

政策プロセスにおけるステークホルダーは社会に対して、科学的に、そして論理的に価値のある政策の研究・立案を行う責任を負う。合意した内容にそって、彼らは資源活用とステークホルダーの貢献への対応について、全てのステークホルダーに対して、責任を負う。

コミュニティーにおけるステークホルダーおよびその他のステークホルダーはその業務実施への貢献が公平でかつ建設的で、科学的なプロセスを守り、コミュニティーにおける各パートナーが特定する最大の利益と合致することを確実なものにする責任を負う。ステークホルダーがその他



のグループ・ステークホルダーの仲介者や代表者として活動する責任を負う場合、彼らは代表するグループ・ステークホルダーの権利を代表する責任を負うことになる。

● **ステークホルダーの自主性の確保**

ステークホルダーの自主性とは業務実施に関する提案に対して、自分の利益や要望に基づいて、ステークホルダーがその提案を支持するまたは拒否する権利をいう。

それぞれのステークホルダーは実施すべき業務の妥当性や適合性について異なる考え方を持つ可能性がある。一つの事業・業務の設計、承認と実施には多くのステークホルダーが参加するがそれぞれのステークホルダーの考える利益がその業務を実施するかどうかを決定する要因となる。

## 第3章

### 公共政策プロセスにおけるステークホルダーの関与分析

#### 3.1. ステークホルダー分析の概念

ステークホルダー分析とは定性的情報を体系的に収集・分析し、特定の政策または事業の展開・実施に関与するステークホルダーの利益を特定するプロセスである。

公共政策プロセスにおけるステークホルダー分析は政策立案、政策実施と政策評価からなる政策プロセスに対する、それぞれ異なる関与度と影響度を持つステークホルダーを特定し、彼らが政府の政策についてどのような関心事、権利と義務を持っているのか評価する作業である。

ステークホルダーの特定と分析はステークホルダーの関心事、権利と義務を分類し、それらの関心事、権利と義務が政策目標と政策手段の特定にどのように影響するかを評価・分析するスキルである。これはとても重要で、公共政策プロセスの全てのステップにおいてはその活用が考慮すべきである。

**Phân tích các bên liên quan là một phương pháp được sử dụng để tạo điều kiện thể chế và chính sách quá trình cải cách bằng cách chiếm và thường kết hợp với các nhu cầu của những người có mối 'đe dọa' hoặc quan tâm đến những cải cách đang được xem xét. Với thông tin trên các bên liên quan, lợi ích của họ, và khả năng của họ để phản đối cải cách, những người ủng hộ cải cách thể chọn như thế nào để phù hợp tốt nhất cho họ, do đó đảm bảo các chính sách được thông qua về chính trị thực tế và bền vững.**

ステークホルダー分析は元々経営学に基づくものであったが、現在では経済学、政治学、ゲーム理論、決定理論、環境学等を融合させた学問分野まで発展している。

ステークホルダー分析は特定の政策の主要ステークホルダーを特定し、それらのステークホルダーの関心事を評価し、その評価に基づいて政策のリスクと持続性を検討する作業である。

ステークホルダー分析は制度評価と社会分析とは密接な関係にある。ステークホルダー分析はこれらのアプローチでデータを収集するが、ステークホルダー分析を通じてこれらのデータは統一したフォーマットに統合することができる。

ステークホルダーの関与というアプローチによるステークホルダー分析は論理的枠組みに基づく政策設計の実現と適切な関与形式の特定につながる。

ステークホルダー分析はあらゆる計画プロセス、あるいは政策プロセスにおける主要ステークホルダーの特定を支援するツールである。これは（政策への）関与が奨励または支援されるべき人は誰なのかを決める第一歩である。

一般的にはステークホルダー分析とは

- ステークホルダーは誰なのかという特定と
- 彼らに交渉と議論の機会を与えること

#### 3.2. ステークホルダー分析の必要性

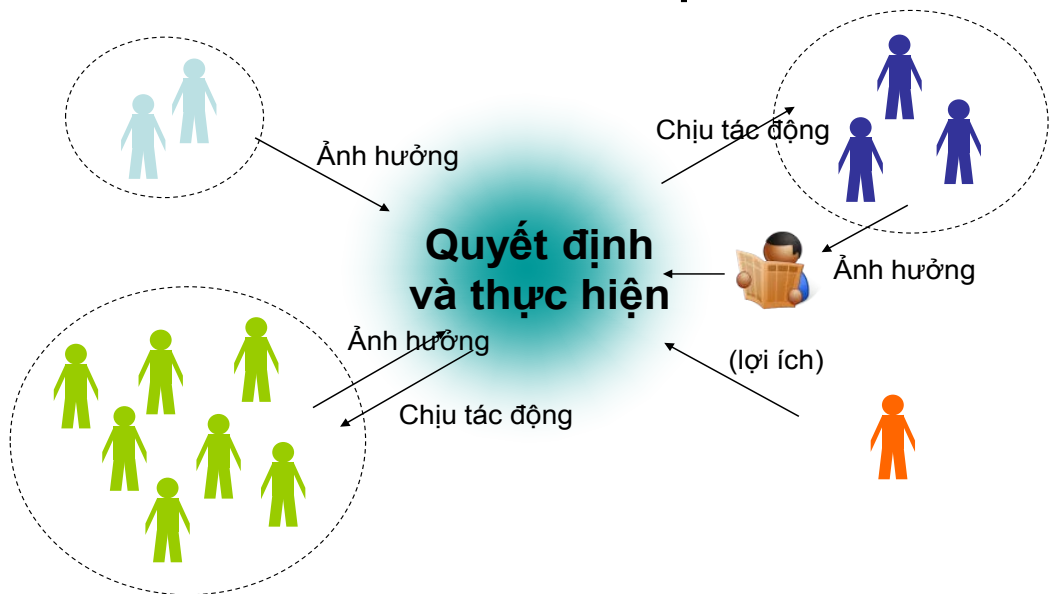
ステークホルダー分析は特定の政策、事業あるいはプロジェクトの社会的影響を理解するための重要なツールである。分析を通じて得た情報は（政策、事業、プロジェクトの）当該政策の影響（積極的な影響も消極的な影響も含めて）を受ける人は誰なのか、政策への関与が望ましいと思われる個人、グループ、団体は誰なのか、ステークホルダーの関与を促進するためにはどのようなスキルが必要なのか等、主体の特定・分析に役立つ。ステークホルダー分析は政策主体による政策環境の正確な評価と政策主体のための情報提供につながる。

また、ステークホルダー分析は政策が対象とする諸問題と結びつくステークホルダーの関心事（例えば、代替案の選択の段階で）と政策目標の特定、ステークホルダーの特徴の明確化、それぞれ異なるステークホルダーの関与能力の評価、潜在的・実質的な利害対立や相手への期待を含めたステークホルダー間の関係および政策への影響または政策より受ける影響についての理解、ステークホルダーの連携構築と政策プロセスへの関与に必要な条件づくり、政策プロセスの各段階への適切な関与形式の評価等につながる。

### ステークホルダー分析の必要性

- ・ 複数のステークホルダーによる合意のための準備
- ・ 議論の質の評価（合意を達成できるのか）
- ・ 全ての主要ステークホルダーの代表者に関する認識
- ・ 合意すべき全てのテーマ（問題）の認識
- ・ **合意と政策立案プロセスに基づく評価**

## Các bên liên quan



3  
3

### 3.2.1. ステークホルダーの関心事の特定

これはそれぞれステークホルダーの関心事や重要性、影響等を特定する作業である。ステークホルダーの関与の対象と関与度の特定の他、ステークホルダー分析を通じてこれらのステークホルダーの意見・考え方を収集するという事で政策立案者はステークホルダーの関心事を理解し、より実践的な政策を立案し、政策対象者および社会のニーズと要望に十分に答えることができるようになる。

ステークホルダーの関心事を特定することによって、政策立案者は政策問題を正確に特定・選択し、政策目標、政策内容と政策の選択についての社会コンセンサスをより得やすくなる。ステークホルダーの関心事の特定は政策の実行可能性、有効性と持続性を決定する重要な要因となる。

ステークホルダーの関与度、関与能力、そして公共政策プロセスにおける重要性と影響範囲に応じて、それぞれのグループに分けて、その関与を評価することで政策の立案と実施に客観性と現実性を持たせることができる。

### 3.2.2. ステークホルダーの特徴と関与能力の特定・明確化

ステークホルダー分析はきめ細かい手順で行われるが、その中で立案中の政策のステークホルダーは誰なのか、どうやって彼らの関与を得るのか、積極的な関与を促進させるには何をしなければならないのか等のポイントを特定し、明らかにしなければならない。

ステークホルダー分析プロセスの中で、ステークホルダーの特徴を明らかにすることで、彼らの潜在能力と優位性を発揮させることができる。ステークホルダーは公的部門の個人・団体、民間部門の個人・団体等、様々であるが、政策プロセスの分析と評価に対し、専門的な立場またはそうでない立場で意見を述べる主体である以上、その関与は必要となる。政策の目標と内容に応じて、ステークホルダーを特定するが、政策に関係するまたは影響される全てのコミュニティーを代表するような形でなければならない。

ステークホルダーの効果的な関与のある政策、事業、プロジェクトは通常、次のような特徴がある。

- ・ステークホルダーの成果への期待を明らかにする。
- ・単なるユーティリティだけではなく、意思決定の一環である。
- ・意思決定に影響を受けるステークホルダーをターゲットにする。
- ・最終段階だけではなく、意思決定の全ての段階において、ステークホルダーの関与を得る。
- ・それぞれのステークホルダーの関与度に応じて、それぞれ異なる関与形態を提供し、ステークホルダーの多様性を表す。
- ・計画における意思決定に影響を与える実質的な機会を提供する。
- ・内部のステークホルダーの関与も外部のステークホルダーの関与も考慮する。

### 3.2.3. ステークホルダー間の関係の理解と評価

ステークホルダーの関与を得るプロセスの原則として、その関与は総合的なもの、すなわちステークホルダーが自分自身と暮らしている社会環境に影響を与える全ての問題へ関与しなければならない。政策、事業、プロジェクトの実施の成功・持続性は部分的にステークホルダーのコミットメントに依存する。ステークホルダーには関与・意見表明の機会が確保されなければ、政策や事業、プロジェクト等に対する彼らの支持は期待できない。このことは当該政策や事業、プロジェクト等の成功にとって大きな障壁となりかねない。

政策や事業、プロジェクト等の成功にとってもう一つ大きな障壁というのはステークホルダーが意見を述べるよう奨励されたが、述べた意見は意思決定プロセスの中で十分に適切に配慮されなかったこと。しかし、ステークホルダーが意思決定プロセスに関与することまたは意思決定プロセスに影響を与えることが認められれば、彼らはその結果が自分の望んでいる結果ではなくてもその結果を恐らくを受け入れるであろう。また、彼らは政策の成功確率を高めることのできる情報を特定し、共有することもできる。

ステークホルダーの関与はまた、政策や事業、プロジェクト等の効率化につながる。ステークホルダーが計画された活動に参加することによって、政策や事業、プロジェクト等の持続性は改善される。

### 3.2.4. ステークホルダー間の関係構築

ステークホルダー分析はステークホルダー間の関係構築と政策プロセスへの関与につながる。

### 3.2.5. ステークホルダーの適切な関与方法の明確化

### 3.3. 公共政策プロセスにおけるステークホルダー分析の各ステップ

公共政策プロセスにおけるステークホルダー分析にはいくつかのアプローチがある。例えば、  
＜次の4つのステップで分析する＞

- 第1ステップ：主要ステークホルダーの特定
- 第2ステップ：ステークホルダーの関心事と基本的な働きについての分析
- 第3ステップ：ステークホルダーの影響と重要性についての評価
- 第4ステップ：ステークホルダーの関与戦略に関するフローチャットの作成

あるいは次のような4つのステップで分析する。

- 第1ステップ：準備
- 第2ステップ：面接
- 第3ステップ：分析
- 第4ステップ：報告

あるいは次のような3つのステップで公共政策プロセスにおけるステークホルダーを分析する。

- 第1ステップ：ステークホルダーの記載様式の作成
- 第2ステップ：政策成功に対するステークホルダーの重要性、ステークホルダーの働きと優位性
- 第3ステップ：政策の設計と成功に関するリスクと問題

本科目では8つのステップで公共政策プロセスにおけるステークホルダーを分析することになっている。

#### 3.3.1. 分析プロセスの計画作成

- *分析の目的と分析結果の利用目的の特定*

ステークホルダー分析において、最初にやらなければならない作業は分析の目的と情報の利用者の特定と情報利用に関する計画の立案である。

ステークホルダー分析に関する議論の主催者と参加者はドナーとステークホルダー分析の実施者、そして分析情報の潜在的な利用者である。

ステークホルダー分析で得た情報は他の分析のインプット情報として使用する以外に、アクションプランの開発や特定の改革政策の支援、コンセンサスの形成等に使用することができる。

戦略計画の立案、制度評価、特定のコンピュータープログラムの導入（例えば、Policy Maker）等の活動に必要な情報を生成するステークホルダー分析は通常、ステークホルダーが誰なのか、政策に関連する彼らの立場、彼らの重要役割等という情報を必要としている。

政策立案者および経営者はステークホルダー分析で得た情報をアクションプランの開発に利用することができる。具体的な内容を持つこれらのアクションプランは、政策立案者および経営者がステークホルダーを支援するために実施する様々な活動の「裏側」で役立つ。また、政策立案者および経営者はステークホルダーとのオープンな議論を通じてコンセンサスを形成するために分析結果を利用することもできる。

ステークホルダー分析で得た情報は特定のステークホルダーが自分の意見表明が他のステークホルダーと比べてどのような位置づけなのかを知るため、あるいは対立するステークホルダーの懸念の解消に向けた話し合いを促すために、関与計画の立案過程で利用されることがある。

**Điều này có thể hữu ích khi số lượng các bên liên quan là nhỏ và dễ quản lý và xây dựng sự đồng thuận khi được nêu ra như là mục tiêu để phát triển các phân tích.**

次のステップに移る前に、分析の実施者は分析の目的と分析結果の利用目的に関する、政策立案者のコンセンサスを確保する必要がある。

- **ステークホルダー分析に必要な資源と支援の確保**

ステークホルダー分析の目的と分析結果の利用と利用者が特定されたら、分析実施者のための必要な財政資源と人的資源が確保されなければならない。

分析実施者・実施団体が自分の組織の中で最終的な決定権を持っていない場合、分析結果の活用と提案した戦略の採用を保証するには、彼らにはハイレベルの政策立案者の支援を得なければならない。

ステークホルダー分析を支える基本的な資源は以下の通りである。

- ・人材：2~4名
  - ・交通費と日当のための予算
  - ・パソコン、電話、コピー機等の機材
  - ・面接を実施するための手段
- **ワーキンググループの発足と研修**

ワーキンググループは2名~4名の小グループが望ましい。それぞれのメンバーは面接者とステークホルダー分析を担当する分析者である。できることならば、グループメンバーはそれぞれ異なる団体と利益を代表する者である必要がある。このことは分析における先入観の発生の未然防止につながる。

また、各メンバーの違う考え方は不明確なデータがある時、その説明に役立つかもしれない。

できれば、このワーキンググループは中立的な立場にある者や政策に対する個人的な見解または関心を持っていない者も含む必要がある。そして政策の関連分野やステークホルダー、政策の背景と政治的な要素等に関する専門知識を持つ者がメンバーとなることは望ましい。

ステークホルダー分析は最初から最後まで全てのグループメンバーの参加・関与が必要とする。これによってグループメンバーは分析プロセス全体に関わりを持ち、分析の経験を蓄積し、これらの経験を将来の業務に活かすことができる。また、ワーキンググループの全てのメンバーが分析プロセスに関わりを持つということは彼らの知識の向上と分析結果への支持につながる。

ワークグループのメンバー選定において、重要なのは面接経験のある者を選ぶことである。経験のある面接者は自分の先入観を押し付けることなく、リストアップされている質問の回答にヒントを与えることができる。そうすれば、ワーキンググループの他のメンバーは定性的な情報を正確に検討し、まとめることができる。ワーキンググループに面接経験のあるメンバーがいない場合、ワーキンググループは必要な研修を受けなければならない。また、全てのグループメンバーはガイドラインをよく読んで、ステークホルダー分析の研修を受けて、そして課題の実施について理解しなければならない。

- **実施計画の策定と時間の枠組みの決定**

ワーキンググループは分析の具体的なステップを特定し、それぞれのステップに必要な時間の枠組みを設けるべきである。タイムマークは分析計画の策定から政策立案者による最終結論の発表まで、ステークホルダー分析の全ての重要なステップを含まなければならない。面接時間の配分とキャンセルされた面接の再設定も重要である。

### 3.3.2.政策の選定・特定

ステークホルダー分析を有益なものにするためには明確なデータに絞って、国レベルや地域レベル、そして組織レベルでの事業やプロジェクト、規則等に関連付けて分析を進めなければならない。ほとんどの場合において、ステークホルダー分析の分析実施者は焦点を当てるべき政策を選

定する。ステークホルダー分析における政策の選定についての基本的なポイントを下記に示す。

(医療分野の例)

- ・当該政策は具体性を持ち、特定できるものでなければならない。
- ・社会の注目を集め、必要な資源を確保するために、当該政策は話題となっている社会・政治的な課題との関連を持つ政策であるべき。
- ・当該政策は現在の改革にとって重要 (key) である。例えば、

ステークホルダー分析に適した政策	ステークホルダー分析に適さない政策
<ul style="list-style-type: none"> <li>・厚生省の権限分散政策</li> <li>・生産高に応じる資源配分政策</li> <li>・病院の権限付与政策</li> </ul>	<ul style="list-style-type: none"> <li>・医療改革政策 (大雑把すぎる)</li> <li>・厚生省の近代化政策 (大雑把すぎる)</li> <li>・厚生省の全てのオフィスにパソコンを導入する政策 (医療改革の優先課題ではない)</li> </ul>

ステークホルダー分析のために特定の政策を選定したら、ワーキンググループは政策立案者と議論し、政策の趣旨と政策策定の考え方を明らかにするべきである。

**Từ những ý tưởng cơ bản, không phải là chi tiết của chính sách, sẽ cần phải được giải thích bởi các bên liên quan trong tiến trình phân tích sau này cũng như nên làm rõ được các khái niệm đơn giản, chính xác.**

### 3.3.3. 主要ステークホルダーの特定

主要ステークホルダーは政策に影響されるまたは政策に影響を与えるため、その関与が検討される必要のあるステークホルダーである。

政策の主要ステークホルダーを特定するには、以下の質問に答える必要がある。

- ・潜在的な受益者は誰なのか。
- ・不利な影響を受けるのは誰なのか。
- ・保護すべきグループは特定できたのか。
- ・政策に対する支持あるいは反対はあるのか。
- ・政策のステークホルダーの関係はどうなのか。
- ・政策行動の実施に必要なスキル、資源、技術を持っているのは誰なのか。
- ・政策の意思決定プロセスに含まれるのは誰なのか。

これらの質問の回答からはステークホルダー分析の最初の情報が得られる。

主要ステークホルダーの特定とは政策に関与する主なグループは誰なのか指摘すること、すなわち意図的な関与に影響を与えるまたは影響を受ける一連の団体・個人から、ステークホルダーを見つけ出すことである。

ステークホルダーの特定はステークホルダー分析の成功にとってとても重要である。ワーキンググループは既存の資源を配慮して、面接を行うステークホルダーの最大数を決める必要がある。作業としては、政策によって利益を受ける者や政策外の要因に影響を受ける人等、当初の政策に関連を持つ可能性のあるステークホルダーを全てリストアップする。重要なのは同じ組織でもそれぞれ異なる地理的・行政的な地域にある潜在的なステークホルダーを考察することである。分析作業に使う資源、時間と財政は限られているため、面接を行うステークホルダーのリストは優先しなければならない。

ステークホルダーの面接は特定の政策と関連を持つ、あるいは特定の政策の影響を受ける、または政策実施に影響を与える可能性のある人・団体を中心に実施する必要がある。

そしてワーキンググループはステークホルダーの持っている、政策に関する報告書等、文書化された情報の有無を確認する必要がある。

ワーキンググループはステークホルダーを選定したら、ステークホルダーの氏名、住所、電話番号等の連絡名簿を作成する。



【今井追加翻訳分】

3.3.4 適切なツールの選択

各ワーキンググループはステークホルダーインタビュー計画を作り、優先順位を定め、それぞれの立ち位置、利益、政策プロセスへの影響力などについて正確な情報がとれるようにする。ステークホルダーへの政策への理解度が、ステークホルダーを確定するのに非常に重要である。政策に対する反対者が政策への誤解や情報不足による場合もある。政策に対するステークホルダーの立ち位置が、同政策を支持するか否か、政策実現の阻害となるかの鍵となる。

情報の収集、分析には以下のツールがある。

●ステークホルダーの特徴を確定

最初に、ワーキンググループはステークホルダーの政策な情報、注目すべき特徴を把握しなければならない。これは全てのステークホルダーに共通しているものである：氏名、年齢、住所、職場、政策に影響を与え得る組織内外の環境、政策への理解度、権利権限、同盟関係、リソース、権力など。

ステークホルダーへの政策への理解度は、ステークホルダーが政策に反対しているのがメディアによる政策への誤解や情報不足なのかを確定するのに非常に重要である。

ステークホルダーの立ち位置は、その政策に反対しているか否かを確定する基本的な情報である。

ステークホルダーのその政策における権益を把握することは、政策策定者や管理者がそれぞれの立ち位置を把握し、各々のステークホルダーが自らの関心を寄せる利益の解決方法を考えるのに役立つ。

ステークホルダーの同盟関係を把握することは、それによりあるステークホルダーが強くなる、或いは主要なステークホルダーとのやり取りを通じ多方面に影響力を及ぼすことになるかもしれないため、とても重要である。

リソースの数、またそれを動員できる力は重要な特徴の一つで、ステークホルダーを政策に賛成させるか反対させるかを強要できる力を示す指数と要約することもできる。

最後に、リーダーを含めたステークホルダーを設定するかどうかは、政策策定者、管理者が・・・

●インタビュー調査票の実施

あるグループが対象として選ばれ、その主たる特徴が確定された後、ステークホルダーインタビューの標準質問票が作成される。質問者は質問票を使用し、インタビューにおける会話を方向付けしていかなければならない。

質問票を作りにあたってワーキンググループは、ある文化的な背景も踏まえ、必要情報を取るのに最も適切な方法を決めなければならない。

直接質問するのが最も効率的な方法に思えるが、関係者がこういった直接的なやり方に慣れていない場合には得られた回答の信頼性が失われることもある。

質問はクリアに、具体的にして、できるだけ質問はオープンクエスションの形にして、「はい、いいえ」だけで答える質問以上のより多くの情報が引き出せるようにする。必要であれば、より特徴的な情報が取れるよう、インタビューの時間を延ばしても良い。

インタビュー終了後、質問者は質問票に署名をする。

●質問事項のチェック

インタビューを始める前に、ワーキンググループは幾つかの対象に質問票を使用してみて、質問事項をチェックしなければいけない。

事前チェックは以下を確認するため行われる；

－質問相手は質問を快く感じるか？

－質問は相手に対してクリアであるか？

－得られる回答はステークホルダーマトリックスを埋める情報を提供するか？

－インタビューは2時間を超えないか？インタビューは各種プロトコールを尊重しているか？

これらプレテストを経て、質問やその形式は必要に応じて実施前に修正される。

●参考表（ステークホルダー表？）の作成

必要なツールには、情報相互チェック表、或いは参考表がある。この表は二つの役割を果たす。

一つには、ステークホルダーの特徴がインタビュー質問内容で示されているかをチェックするツールとなる。

二つには、ワーキンググループが情報を質問票から関連する表に移しやすくする。

・・・（ここは今井もどういう表かイメージが分からずに訳が困難なため、明日確認してみましょう。）

3.3.5. 情報の収集と記録（越語版p 70～83 は間に合わず、見出しや紹介されている表のみの訳としております）

●現在ある情報の把握

●インタビューの実施と結果の記録

3.3.6. ステークホルダー表・マトリックスへの記入

●ステークホルダーの立ち位置の確定

3.3.7. ステークホルダー表・マトリックスの分析

●知識データの分析

●ステークホルダーの立ち位置の分析

●関心データの分析

●同盟関係の分析

●結果からの発展、補足

3.3.8. 分析情報の使用

●提案されうる戦略の説明

3.4. 政策プロセスにおけるステークホルダー分析

3.4.1. 政策問題特定におけるステークホルダー分析

3.4.2. 政策策定におけるステークホルダー分析

- ステップ1：政策策定の理由明示
- ステップ2：政策オプションのドラフト作成
- ステップ3：最も良いオプションの選択
- ステップ4：選択されたオプションの完成
- ステップ5：政策オプションの審査
- ステップ6：政策の決議発布
- ステップ7：政策の公表

表：公共政策策定段階における各ステークホルダーの関与度

ステークホルダー (SH)	ステップ 1	ステップ 2	ステップ 3	ステップ 4	ステップ 5	ステップ 6	ステップ 7
SH 1							
SH 2							
SH 3							
……							

3.4.3. 政策実施におけるステークホルダー分析

- ステップ1：政策実施展開計画策定
- ステップ2：政策の周知
- ステップ3：政策実現への連携分担
- ステップ4：政策の維持
- ステップ5：政策の調整
- ステップ6：政策モニタリング、チェック、推進
- ステップ7：評価、経験の総括

表：政策実施段階における各事項の確定

関係者	関心事	影響力	関与する力・関与するモ チベーション	他の SH との関係
<b>A</b>				
<b>B</b>				
<b>C</b>				

...				
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表：政策実施過程での関与のあるステークホルダー対象とその度合い

ステークホルダー	ステップ 1	ステップ 2	ステップ 3	ステップ 4	ステップ 5	ステップ 6	ステップ 7
A							
B							
C							
.....							

#### 3.4.4. 政策評価におけるステークホルダー分析

##### ●ステークホルダーの分析方法

#### 3.5 ステークホルダーの参加分析手法

現在のステークホルダー分析モデルは、これまでに紹介したツールの他にも定量的な手法を応用し、ステークホルダー、そしてその立ち位置、他グループへの影響力、ある具体的な政策への関心度などを理解することを目指している。そのほか、それら手法は各種の政治社会団体に対する改革の影響を示し、提案された改革への異なる意見やグループごと、個人ごとの権力争いを明示し、各ステークホルダーと交渉する潜在的な戦略を示す意味がある。

政策プロセスにおける異なる段階によって、あるいはステークホルダー分析の目的の違いによって、管理者の必要にあった適切な分析手法が選ばれる。以下は幾つかの基本的な手法である。

##### 3.5.1 SWOT分析 (越語版 p83-84)

(以下主にSWOT分析自体の説明のため省略)

##### 3.5.2 プロブレムツリー分析 (越語版 p85-89)

(同上のため省略)

## 第4章

### 公共政策プロセスにおけるステークホルダー関与 (参加?) 評価

#### 4.1. ステークホルダー関与評価の目的・要件・対象

##### 4.1.1. ステークホルダー関与評価の目的

インパクト評価と、公共政策プロセスにおけるステークホルダー関与の重要性。

重要な政策プロセスに関連する対象に関する必要な情報、例えば関与可能性と関与度、影響力政策の科学性、客観性を担保するために潜在的に必要な関係者の関与を収集する。政策サイクルを実施する際の透明性を担保し、公共政策に対する社会の認知を得、政策効果を高める。

##### 4.1.2. ステークホルダー関与評価の要件

－関与する関係者の利害に対する政策の影響に関する初歩的なインパクトに関する評価。

－利害関係者の政策に対する期待を、ポジティブ、ネガティブ、ニュートラル、よくわからない、などに分類しておく。

－ステークホルダーの影響力と重要性を統合し、幾つかのグループに分類し、課題とリスクを見極め、政策設計を通じて対処（管理?Manage?）していく。

－ステークホルダーの影響力、重要性の評価

#### 4. 1. 3. ステークホルダー関与評価の対象

●最も主要なステークホルダーは、政策の成功に影響を及ぼす、重要な人たち

インパクトは以下のような根拠で評価される；

－政策に対する力がどの程度なのか？

－重要性は、課題、ニーズのある、或いは利益が政策の優先事項となっているかなどで評価する。

もし重要なステークホルダーが効果的に支援されなければ、政策は成功することができない。

#### 4. 2. ステークホルダー関与評価の指標と内容

##### 4. 2. 1. ステークホルダーの利益

ステークホルダーの利益は維持されるか、或いはシステムが変わるか？

－法理

－知識、情報

－支持

関与者の利益と関連する問題は

－局部的利益

－認識の違い

##### 4. 2. 2. ステークホルダーの権力（主催・関与・受益）

主体、参加、受益といった異なる関係者の役割を変えるに至るインパクトの中でのステークホルダーの影響力

##### 4. 2. 3. ステークホルダーの関心と主体性

##### 4. 2. 4. ステークホルダーの齟齬・対立のコントロール

##### 4. 2. 5. ステークホルダーの相互作用（関与度・関与形式）

－関与度

－関与の仕方：正式な形、自然な形

－関与の質の評価（関与するための条件、民主度、集められた意見の統合と説明、など）

－政策を変更する機会：ベトナムにおける政策はいまだ政府機関の仕事である。市民や政府組織以外の参加は政策に合法性をもたらすにとどまっている。現実のベトナムにおける政策プロセスでは、政策をドラフトし審査する個人グループがその政策の方向性や内容に大きな影響力を持っている。

#### 4. 3. 公共政策プロセスにおけるステークホルダー評価の各ステップ

##### 4. 4. ステークホルダー関与評価のツール

##### 4. 4. 1. ステークホルダーの監督・評価計画

監督するにあたり重要なツールは計画・監督評価計画マトリックスである。監督評価計画は、各指標のために提供すべき必要な情報を明確にするフレーム枠中の各種要素を含む。

監督評価計画はデータ収集、分析、活用を管理するための重要なツールである。

監督評価計画はステークホルダーの管理実現をサポートするため、フレームワークを補完する段階である。

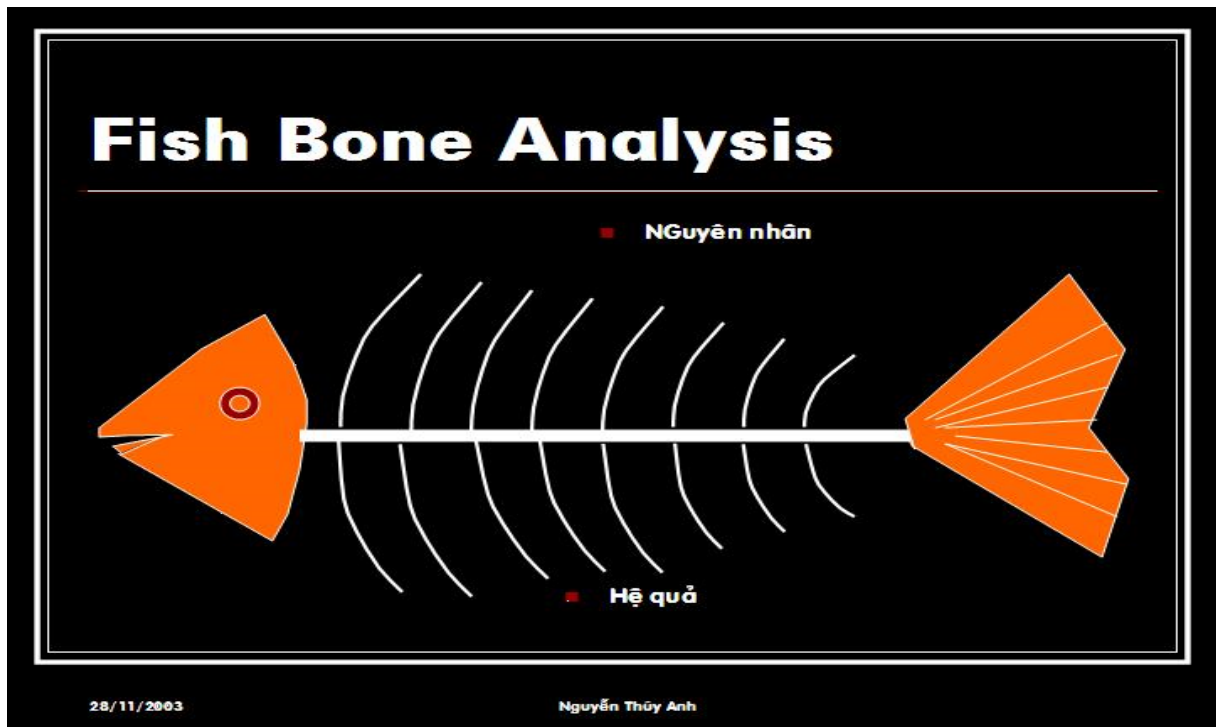
監督と評価の違いとは、それぞれの領域の優先順位にある；監督は活動実施の過程に重きを置く傾向にあり、評価は実施による影響、或いはインパクトに着目するものである。

監督と評価は非常に密接な関係にあり、監督は評価に対して情報を提供する関係にある。それゆえに、監督計画と評価計画を同システムの一つと捉え、ステークホルダーを全面的に、徹底的に評価するよう、計画を作るのが最も良い。

監督と評価は、政策が達成した結果を正確に、クリアに報告する作業の基礎となるものだ。各種目標と指標が計画段階からクリアに決められ、包括的な監督評価システムが作られ、活動実施進捗についての情報が収集されれば、報告は非常に容易になる。こういう風に行えば、報告はスタッフに取った難しい作業ではなくなり、深い分析を行い、組織に対して得られた教訓を示し、同時にステークホルダーへのインパクトを決定し、評価するのに情報を提供することとなる。

この資料に続く指導要領（ガイドライン）では、監督評価計画策定から情報収集、分析報告までの、監督、評価システムの主要な要素に対してより詳細に見ていく。

#### 4.4.2. 特性要因図による分析 (Fishbone Analysis)



#### 4.4.3. 結果による分析

### 4.5. 政策プロセスにおけるステークホルダー関与の評価内容

#### 4.5.1. 政策問題特定におけるステークホルダー関与の評価

- 課題に関する情報収集におけるステークホルダーの関与度
- 問題確定におけるステークホルダーの関与度：現状に関する政策な認識と、問題の構造化  
+ 現状と問題の構造分析に関する評価：問題の種類と程度の確定

+問題設定の適切さの評価と問題解決能力の評価：問題は解決できるのか？

●課題を政策アジェンダへ入れ込む中でのステークホルダーの関与度評価

+主体、ステークホルダーの誰かが課題を政策アジェンダに反映させることはできるか？：客観的か主観的か。

+困難を見極め、政策アジェンダの中の課題を解決するため政策的解決方法を提案する。

#### 4.5.2. 政策策定におけるステークホルダー関与の評価

課題解決のための政策ドラフト過程でのステークホルダーの関与度評価

●課題解決のための政策オプションにおける実現可能性審査におけるステークホルダーの関与度評価

●課題解決のために選択される政策オプションの調整、最終化過程におけるステークホルダーの関与度評価

●政策決定ステップにおけるステークホルダーの関与度評価

#### 4.5.3. 政策実施におけるステークホルダー関与の評価

#### 4.5.4. 政策評価におけるステークホルダー関与の評価

●評価に対する考え方、及び評価指標設定、評価活動にステークホルダーの関与度評価

●評価結果分析、確定におけるステークホルダーの関与度評価：政策内容、政策決定、政策形成、実施プロセスの結果、政策実施組織など

●（公共？）サービスの質、サービスへのアクセス、市民・カスタマーの満足度などの確定におけるステークホルダーの関与度評価

●公共政策が環境、組織環境に与えるインパクト確定におけるステークホルダーの関与度評価

## 科目「法律と公共政策演習」

### 1. 教員情報

a. 科目担当教員氏名：レ・ティエン・フオン (*Le Thien Huong*)

役職・職位・学位：准教授、博士

勤務時間・場所：国家行政学院 国家と法律学科

連絡先住所：国家行政学院 国家と法律学科

電話：                      、email:

b. 参加教員情報：

- ルオン・タイン・クオン (*Luong Thanh Cuong*)

役職・職位・学位：准教授、博士

連絡先住所：国家行政学院 国家と法律学科

電話：                      、email:

- グエン・クオック・スー (*Nguyen Quoc Suu*)

役職・職位・学位：准教授、博士

連絡先住所：国家行政学院 国家と法律学科

電話：                      、email:

- チャン・ティ・ジェウ・オアイン (*Tran Thi Dieu Oanh*)

役職・職位・学位：博士

連絡先住所：国家行政学院 国家と法律学科

電話：                      ; email:

- フイン・ヴァン・トイ (*Huynh Van Thoi*)

役職・職位・学位：博士

連絡先住所：国家行政学院事務局 ホーチミン市キャンパス

電話：                      、email:

### 2. 科目概要

- 科目名：法律と公共政策

- 英語名：LAW AND PUBLIC POLICY

- 科目コード：

- 単位数（出席/実習/自己研究）：02



- 授業の方法と時間配分

- + 理論講義の受講：20 コマ
- + 課題：
- + ディスカッション：10 コマ
- + 実習：
- + グループワーク：
- + 自己学習：

(注：1 コマ=15 限の理論、1 限=45 分、1 コマの理論=2 コマのディスカッションあるいは実習)

-対象となる専門分野：公共政策

授業レベル：大学院レベル

授業形式：正規-集中

-科目の種類：必修/選択

-先決科目：(必修科目)

-先修科目：(科目の知識を身につける基礎をなす)

-同時受講する科目(もしあれば)：

-科目に対するその他の要求：

学生は必ず薦められた文章資料や講義テキスト、法律文書を事前に読み、クラスでのディスカッションや研究グループに参加することが求められる。

- 科目担当学科/部門：国家行政学院 行政学部 国家と法律学科

### 3. 科目の目標

#### 3.1. 科目の全体目標

*知識：*

同科目終了時、学生は下記に関してより高い知識を修得することが期待される。

- 公共政策との関係における法体系の役割の明確化
- 政策の策定・作成過程と法律策定過程の区別
- 上記2つの過程の関係の指摘

*技能：*

- 政策を分析し、法律の効果を評価する能力を養成する。
- 政策策定や法律作成グループに参加する能力を持つ。

*態度：*

実際の活動や科学研究において、公共政策と法律との関係に関する知識や方法論を理解し、自信を持って正しく活用する。

### 3.2. 科目の知識に関する具体的な目標

授業では、各章毎に以下の具体的な教育目標を消化する：

- 法律と公共政策の全体像
- 国家活動における法律と公共政策の相互作用。その中では憲法が公共政策の作成と実施における基盤と見なされる。

-公共政策の内容を法律に最良の形で反映させるための法律の作成と評価。

-授業は、法律と公共政策についての認識をめぐって、同時にこの2つの問題の法律規定における、また実際の施行における相互作用をめぐって展開する。

### 4. 科目内容の概要

法律、公共政策、それらの関係について基本的理論を紹介する。

法律と公共政策の効力・効果の分析・評価のために、理論とその理論に基づく道具を適用する。

授業「法律と公共政策」法律と公共政策の関係についてのディスカッション。4つの部分より成る。第一部（第1章）法律の観念、本質、機能、役割、法源について基本的内容を通じた法律の理解のための理論枠組み、世界の法律体系を提示する。そこで法律の観念における多様性と一定の統一性を強調し、そこから公共政策との相互作用を認識させ、双方が国家の重要な社会管理の道具であることを認識させる。

第二部（第2章）（（他に対する）役割についての法律と公共政策の相互関係、両者の間の区別、国家活動において両者が相互に作用する関係を通じて）法律と公共政策の間の相互作用を明らかにする。特にこの第二部では、法律と公共政策の根本的な関係を保障する上での憲法の役割を強調する。

第三部（第3章）ベトナムにおける現行の立法規定、法律評価（法律の効力、効果）に言及する。それにより、立法規定に従った政策の法律への反映のあり方を分析し、国家管理における法律と公共政策の共同の機能を制限する反発が両者の間に生まれる理由を提出し、現在のベトナムにおける法律の効果と効力の評価の基準と形式を示すことを目指す。

第四部（第4章）課題を課して、上記三部で示したテーマを明らかにさせる。

講義・クラスディスカッションへの参加といった授業形式を通じ、科目修了後、学生は公共政策との関係における法体系の役割を明確化し、また政策策定・作成過程

と法律作成過程を区別し、そこから公共政策作成・法律の公布・あるいはこの2つの範疇に関する科学研究に対し、より効果的に活用する方法を導き出すことができる。

### 5. 科目の詳細内容

科目の、各章・節・項若しくは主要な問題毎の詳細内容を下記に列記する。

	内容	理論	課題	ディス カッシ ョン	計
<b>1</b>	法律総論	4	0	2	<b>6</b>
<b>2</b>	法律と公共政策の相互作用	8	0	2	<b>10</b>
<b>3</b>	立法規定と法律評価	8	0	2	<b>10</b>
<b>4</b>	課題	0	0	4	<b>4</b>
<b>計</b>		<b>20</b>	<b>0</b>	<b>10</b>	<b>30</b>

## 第1章 法律の全体像

### 1.1. 法律の概要

#### 1.1.1. 法律の概念

法とは様々な異なる形で表れる、複雑な社会現象である。前世紀後半から、ソビエトの法学者は、法認識、法定義の問題に言及してきた。1975年から E. A. Lykaseva 教授は、その運用における異なる法の概念、あらゆる法定義の相対性、限定性を述べている<sup>1</sup>。O. E. Leyxo 教授によれば、法は特に複雑な社会現象であるため、法に関する一般概念を見出すことは困難である<sup>2</sup>。

古くにはドイツの哲学者カントが、法律家は法の定義を常に探し求めていると述べているが、この言葉の価値は、現在も薄れていない。

長い歴史の中で、人間は法とは何か、何を以って法とするのか、法の起源は何か、法の存在目的は何か、といった大きな問い掛けをめぐって常に議論してきた。実践から理論に至るのか、理論から実践に至るのか、それぞれの異なる角度により、人々は異なる法の概念、認識を持つ。

大昔、皇帝はどんな言語で話そうとも、どこで統治しようとも、みな同じく「法は我なり、我は法なり」と宣言した。公の秩序のために法を適用せざるを得ない時、「法とは必要な苦しみである」と言われる。

道徳との相関的な面から、法は道徳的価値を有し、法は道徳的現象であるとされる。公正さおよび自由の面から見ると、法とは公正さの定量、自由の定量である。機能の角度からアプローチすると、法とは社会的行為および関係を調整するための道具・手段であるとされる。様々な紛争の角度から見ると、法は紛争解決のための道具・手段として評価される。

国家との相関において、法とは国家権力を制限する手段であり、社会管理における主要な道具であるとされる。要約すると、法とは異なる利益・意図・意思、異なる空間・時間において、異なる認識主体により、異なる様々な角度から認識されるものである。

<sup>1</sup> E. A. Lykaseva、雑誌「国家・法律」、国家・法律院（ソ連）第4号 1975年、30、31、34ページ

<sup>2</sup> Leyxt、法の本質、モスクワ、2002年 273、274、275ページ

本質的な問題である法の問題は、法の基本カテゴリーの中でも特別な重要性を有する。なぜなら、そこから他の基本的な法カテゴリー、法現象の認識、生活における法律の運用に影響、関連するからである。その関連範囲は、法源、法心理、法思想、さらに重要な法の適用方式、適用原則に及ぶ。

現在、法の問題は公正さ、自由の定量であるとする事は時代の流れである。心理主義派によると、法は国家規範体系であるだけでなく、人間の心理的な感情も包括する。従って、国家の拘束性は法の基本属性ではなく、個人の心理的感情である。法社会学派は法の実施過程、行動における法を先ず重視する。法社会学派は法の適用過程において、法規範を変えられるとする「法の柔軟」思想を後押しし、裁判所は法に縛られず、自らの判断に基づいた法の適用が可能であるとする「裁判所の自由な判断」を後押しする。マルクスレーニン哲学は唯物論の哲学に基づき、法に対して経済基盤が規定する役割について言及し、国家により実施を保証される法は支配階級の意思を体现すると言及する。

古代より存在する自然法論は、市民革命に繋がるロック、ヴォルテール、モンテスキュー、ルソー、ラジューシエフなどの法認識における主要な流れの1つとなった。自然法とは自然が創造され、生まれた時からすべての人々に与えられた不可侵の権利の統合であり、国家領土、民族によって制限されない理性、公正さである。実定法は自然法の理想を現実化するのに重要な役割を果たす。カントに代表される実定法（抽象的規範）主義は、いかなる外的現象にも依存しない、絶対的観念の共通の強制的要求の観点から出発する。この学説は、国家法権は法により制限されるという思想を打ち出す。哲学的論拠を用いて、ヘーゲルは「法とは、それ自身のためにそれ自身で存在し、客観的な合理性を表わす共通の意思であり、実現された自由の王国であり、法は観念のように総じて自由である」と断言している<sup>3</sup>。

H.ケルゼンに象徴される実定法主義者は、「法と道徳的基盤には何の関係性もなく、法に良し悪しはなく、法はただ存在しうるものである」としている。理性、合理性、公正さを含む規律としての法の問題は、モンテスキューの時を越えた不朽の名作「法の精神」の主な思想テーマである。法はあらゆる現象で存在するが、人間に対する法は合規性、合法性、公正さを備えた理性の表れでなければならない<sup>4</sup>。

<sup>3</sup> ヘーゲル、全集、経済・社会出版社、モスクワ、1934年、第7巻、31-35ページ（グエン・チョン・チュアン（Nguyen Trong Chuan）解説、ヘーゲルの法権哲学、国家政治出版社、ハノイ、2002年、115ページ）

<sup>4</sup> モンテスキュー、法の精神、ホアン・タイン・ダム（Hoang Thanh Dam）訳、教育出版社、ハノイ、1996年

法は客観的意味および主観的意味のどちらにも理解され、用いられる。客観的意味において法とは、生活の法秩序である国家の法規定の統合である。客観法は、一般的な意味における法であり、具体的な個人ではなく、すべての人に共通して適用される法規範である。主観的意味において法は、個人の具体的な権利における抽象的規則が具現化したものと理解される。客観法の規定に沿った行為選択の自由、可能性こそが主観法である。

法の物質的概念、即ち実定法とは、制定され、社会に現実に存在する規範体系である。法は複雑、多様な社会現象である。法の属性、法的価値を含めて、法とは何か（定義）という問題と、法現象（法の認識、概念）は類似し、互いに拘束しあう問題であっても、完全に一致することはない。更には、それぞれの国家・民族の観点や伝統、歴史的時代によって、法現象のポジション、役割、価値が評価される。これは世界の象徴的な法体系・系統に明確に見て取れる。従って、我々にとって、広義の法概念は、過去に適合し、更に現代の世界に適合し続ける合理性を持ち合わせるものである。法は、法規範体系、法思想・法意識・法文化、法の実践（法の実施形式・法関連など）の3つの領域で存在、発展する。法認識における重要事項は、その内容だけではなく、表現形式にもある。インプット、アウトプット、静的・動的状態での法の研究、評価がなされなければならない。

広義の法概念によると、実定法は法の一部でしかない。実定法概念、実定法思想は、実定法以外に、法の他の部分も広義の法カテゴリーに属するという主張を包括している。この観点は世界中の多くの国家、法学派に存在する<sup>5</sup>。実定法の他に、様々なレベルの法的性質を持つ非実定法がある。非実定法がどのように評価、認知、適用されるのかは、国家ごとに異なる。

法律学は現行の法体系を分析するだけではなく、法評価の指標を打ち出さなければならない。従って実定法の観点（法の分析）の他に、法の評価指標体系、法とはどうあるべきか、すべての法領域（法規定体系、法の実践における法と法律行為の関係）および法意識・法文化の領域における法の良し悪しを分別するための指標を打ち出さなければならない。

学術出版物における表現は完全に一致しないが、基本的に昔からある伝統的な法の定義は、「法とは、確定されたある目標に沿って社会関係を調整するために国家

<sup>5</sup> Jean - Claude Ricci, 法学入門、文化・情報出版社、ハノイ、2002年、7、8ページ

が制定又は認定し、そこに国家の意思が表れ、国家により実施が保障される、共通の行動規則体系である」<sup>6</sup>。

伝統的な定義は、最も基本的・象徴的な法の属性、法の目的・機能を組み込もうとした。その定義は、「法学は社会関連領域を調整する法規範の総体である」という我々の長年の法学理論、法体系理論を先導してきた。

今日、法学の境界設定は相対的にしかなされず、時に「法領域」の概念の方が一定レベルでより合理的である。

従って、狭義的に法とは、社会の利益および支配階級の利益のため、国家により制定され、社会関係を調整するための行動規則である（これを実定法と呼ぶ）。広義的に法とは、共通の行動規則を含むだけでなく、異なる法源で表れる慣例、判例、行動原則、思想、法理論なども網羅する。法は様々な面（起源、特徴、本質、機能、形式、法源、法系）において認識される。

### 1.1.2. 法律の本質と機能

#### a. 法律の本質

法律の本質は、法律の内容、実質、内側の最重要部分を形作るいくつかの強固な属性であり、それは法律の存在、運動を決定する。多くの要素が法律の本質を成しているが、特に国家の経済的基礎と社会的基礎は基本的な2つの要素である。法律の本質には多くの属性があるが、最も基本的で最も強固な2つの属性は階級性と社会性である。

#### 法律の階級性

マルクス・レーニンの学説によると、法律は階級社会において発生し存在するものである。法律の本質はその階級性を体現する。自然な法律、あるいは階級性を帯びない法律というものはない。法律は支配階級である国家が発布するものであるから、法律には階級の本質が深く入る。支配階級が法律を発布するのは、この階級の支配者としての地位を認めさせ守るためであり、政治を行う階級が提出した政治目標を実現するためである。法律の階級性とはまさに支配者の意思の中身であり、法律の中に現れる。法律の一般的な強制力を通じて、そして国家権力によって、支配階級は自

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<sup>6</sup> その他の定義：「法とは国家により定立又は認定され、社会全体の利益要求の反映を基盤とした支配階級の意思が表れ、社会の持続的な発展のため、社会の秩序・安定を目的とする社会関係の調整に寄与し、国家により実施が保証される共通の強制性を持つ行動規則体系である。」（法学部 - ハノイ国家大学、ホアン・ティ・キム・クエ (Hoang Thi Kim Que) 准教授、博士(編集)、国家および法律理論テキストブック、ハノイ国家大学出版社、ハノイ、2013年 288 ページ)

らの階級の意味を国家性を帯びた集合意思に変え、社会全体に強制し、他の階級に遵守することを強いる。法律は、権力をもつ階級が社会を管理し自らの地位を維持するための有効な方法となった。マルクスとエンゲルスは、財産法について研究し、『共産党宣言』の中で「あなたの法律はあなたの階級の意味が記されて法律となったにすぎず、その意思の内容はあなたの階級の物質的な条件が決定したものである。」と結論している<sup>7</sup>。このように搾取国家の法律に反映される意思は搾取階級の意味であり、その意思は支配階級の経済的条件によって決定される。

### 法律の社会的性質

法律は、何よりも先ず支配階級の利益を守る秩序を打ち立てることを目的として社会関係を調整する。しかしながら、社会は一定の秩序の中で存在・発展しなければならず、法律も国家も、一定の社会的・政治的・経済的条件に合った、公共秩序、社会福祉、医療発展、教育、環境保護などの社会の利益と需要に対応しなければならない。法律の規範は社会における「自然の選択」の結果であるといえることができる。国家を通して、社会は、「客観的」で「合理的」な解決法、つまり社会の大多数の利益に合致する、大多数が認める解決法を認める。そのため、法律の規範は、客観的真理が反映されているので、規則性を帯びるといえることができる。マルクスは「法律は社会の基礎をなし、社会の公の需要と利益を表現しなければならない」と書いている<sup>8</sup>。さらにマルクスは「社会に適合していない法律書は紙くずとなる」と強調している<sup>9</sup>。このことは、法律は支配階級の利益を極端な形で反映し保護するだけでなく、同時に、社会の発展と秩序を守ることを目指して、一定の範囲内で他の階級の利益と社会の発展要求を反映しなければならない、そうして初めて支配階級の利益を維持することもできるという意味である。

その他に、法律はさらに国家を世界と結びつける方法でもある。その過程で、法律は国家の利益、個人の利益、国内外の組織の利益を守り、また穏便で効果的な関係を打ち立てる役割を果たす。

法律の階級性と社会性の関係：法律は階級性と社会性をあわせもつ現象である。この2つの属性は互いに密接な関係で結ばれている。体系的な観点から述べる

<sup>7</sup> C. マルクス, Ph. エンゲルス 『全集』 CTQG, H(国家政治, ハノイ) 出版. 1995年, 4巻, p.619)

<sup>8</sup> C. Mác và Ph. Ang ghen: Toàn tập, Nxb. CTQG, H. 1993, T6, tr. 332. (C. マルクス, Ph. エンゲルス 『全集』 CTQG, H(国家政治, ハノイ) 出版. 1995年, 6巻, p. 332)

<sup>9</sup> id. at p. 333.



と、ただ階級性だけを現す法律はないし、また社会性だけを反映した法律もない。しかしながら、その程度については、この法律の2つの属性は、経済的条件、社会的条件、立場、政策路線、各国の社会・政治の傾向、あるいは背景となる歴史的時期が異なることによって、大きく異なって現れるし、また常に変動している。

階級性、社会性、そして2つの属性の関係は、法律において異なって表現される<sup>10</sup>。

### **b. 法律の基本的機能**

法律の機能は、法律の階級性という本質と社会性という価値を反映する、社会関係に対する法律の基本的な作用であると理解することができる。

法律には主に3つの機能がある：調整機能、教育機能、保護機能。

#### - 調整機能

法律は処理規則を定め、権力をもつ階級に利益をもたらす方向へすべての主体を強制する法的枠をつくる。

しかしながら、法律は人生で起きるすべての社会関係を調整する万能の道具ではない。法律はすべての社会関係を調整できないし、またすべきでもなく、典型的で普遍的な社会関係のみを調整する。なぜなら、法律の他に、多くの社会規範が同時に人間の対応に作用し、様々な種類の社会規範が人間の行為の調整において一定の意味をもつからである。そのようなわけで、法律は、国民の合法的な利益と権利、国家と社会の利益に直接関連する社会関係を調整するにすぎない。

法律は諸々の方法を通じて社会関係を調整する：規定、許可、禁止、社会関係に関与する各者の権利と義務の決定...

#### - 保護機能

法律は社会関係が国家によって保護されること、犯されないことを保証する。社会関係が犯された場合には、国家は、権力をもつ各機関を通じて、また一定の法的

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<sup>10</sup> それによると、農奴制の法律は階級性が色濃く、社会性はまだ多く表されない。封建制の法律は社会性をかなり明らかに示す。社会性の表現は、法律が社会管理の道具と見なされたことを意味する。自らの国土の具体的な条件に従う封建国家は、通常、国土の発展、国の人民の利益、国家の繁栄のために経済社会活動を進めた。資本主義の法律には、自由、民主についての規定が多くあり、多くの人々は、人民が人民の利益のために作成したものであるから、資本主義の法律は社会の普遍的な法律で、階級性を帯びていないと思い誤った。しかし、所有権の制定、契約の制度化...を通じて、資本主義の法律の階級性は明らかに示された。社会主義の法律も他の法律と同様に階級性と社会性をもつが、社会主義の法律の階級性と社会性は、前述の国家の法律のものとは内容的に異なる。社会主義の法律の階級性と社会性はより高位にあり、それは労働者の階級性と人民性である。

手続きに従って、違反の程度に合わせた処理を適用する：規律処理、民事損害賠償、行政処理、刑事責任追求。

進歩的な法体系が法律違反行為を予防、阻止することは、保護機能における重要な点である。法律の保護機能を現実のものとするために、国家は、法律違反行為、強制措置、秩序、処理手続きについての各規定を定める。法律は、法律を保護する権限を国家の各機関に規定する：調査機関、裁判所、検察庁、行政機関。

#### - 教育機能

法律の規定と実際の状況の作用を通じて現実のものとなる法律の教育機能は、法律を人々の意識に定着させ、人々が国家が望むやり方で行動するよう導く。

法律の教育機能は、立法活動、法的情報の供給、法律意識の教育によって展開される。

法的実践も法律の教育機能の実現にとって重要である。法律を正確に適用する活動そのもの、また人々が法律に模範的に従うことも社会における法律の意識教育に少くない貢献をする。

上記の各機能は、法律の調整を目的として、すべて相互に関連している。

### 1.2. 発展における法律の役割

#### 1.2.1. 法律は社会の発展方向を規定する

法律の調整の対象は、社会における最も重要で基本的な社会関係である。法律が社会関係を調整する目的は、社会と国家の利益にあうように、客観的な規則の尊重という基礎の上に、それらの関係を動かし発展させることである。よって、社会発展に対しては、上記の目的実現のために、法律は基礎を打ち立て法的架け橋となる。社会発展の基本的な要素とは、市場、国家、民間社会についての各要素である。これはまさに法律の反映機能であり、法律は権力をにぎる階級の社会発展に対する戦略的政治路線を表す。

国家の経済管理において最も重要なことは、経済的主体の経営における平等のために、法律が法的架け橋をつくることである。同時に、国家は、管理の主体となり、経済の強固な発展を目指した方針を定めるためにその基準にしたがう。市場経済関係は、特にベトナムの具体的な状況下では、多種多様で積極的で複雑である。そのため、偶然の勝手な要素を排除して、秩序の乱れ、恐慌を防ぎ、穏便な秩序を打ち立ててほしいという調整への要求が日に日に増している。法律は効果的ないくつかの調整方法のうちの1つであり、経済関係の存在と発展のための正式の信頼できる順調な

環境を作り出す。法律は、労働を享受する能力に従って原則を最も良く実現するための方法である。同時に、法律は、貨幣と商品の関係、利益に関する関係を体制化し、組織と活動の面で管理構造を整えて体制化する方法であり、それにより法律は社会全体の規模で実施の効力をもつようになる。

国家と法律は、矛盾に満ちた法治国家—しかしながら統一された政体の矛盾であるが—の概念を形成する2つの要素である。

国家と法律の間の矛盾は以下のように現れる：一方で国家は法律を発布・承認する1つの権力体制であり、他方で国家は法律を尊重し自らを法の下におかなければならない。しかしながら、それらの間の統一は具体的に表現され、それらは前提とされている。国家がなければ法律はないし、法律がなければ国家の機構を統一することはできず、国家の機構において関係を構築することもできない。

国家はそれらの間の統一性ととともに法律を遵守しなければならない。それらの間の統一性は、その政治性に、またその固有の階級性に現れる。なぜなら、国家と法律はともに支配階級の政治権力構造であり、支配階級の利益を守るものだからである。国家と法律は、それが存在する社会の物質的基礎によってまた統一される。

国家と法律の間の統一性は、それらがともに社会性をもっていることによって規定される。国家は最も規模の大きな公の組織・社会組織であり、他方で法律は最も普及した社会関係の模式化の方法、一般的な処理規則である。このことは、なぜ国家が法律を尊重し従わなければならないのか、またなぜ法律は国家の刷新にともなって刷新されなければならないのかを説明する。国家と法律の間の統一が損なわれる時、次第に国家が法律に違反する状況が生まれるだろう。

国家と法律の統一については、一定の段階、時点で区別される可能性がある。なぜなら、国家と法律は、程度の差はあれ、また途中経過は異なるものの、経済的、社会的、政治的要素、つまり外的要素に左右され、影響される現象だからである。それは、国家と政治の関係、法律と政治の関係、国家と経済の関係、法律と経済の関係である。法律を発布する国家は、支配される他の要素を考慮に入れなければならない、自らの主観で好き勝手をすることはできない。そのことは、国家と法律の発展が一樣ではないこと、なぜ国家がある段階で法律に違反するかを説明する。

社会の中では、法律が自らの社会性を十分に表現する時、法律は初めて法の主体の自覚の厳格な実現を確実なものとする。その時こそ、国家は初めて真に自らを法

の下におくことができ、社会の価値を尊重するように法律を尊重する。初めて法治国家となるのである。

### 1.2.2. 法律は人間価値の発展における法的基礎を作る

人文が発展する環境とは、社会関係、個人と組織の行為、その中でも特に人権、公民権が開かれているだけでなく、守られていることが明白で平等な空間であると理解することができる。もし法律が個人と組織を管理する以外に社会恐慌の発生を阻止するとすれば、法律は危機を予防し管理するといえる。この場合の法律の更なる役割は、すべての人々が発展の恩恵を享受することができるように福利を調節することである。

社会関係を調整する方法である法律は、社会の安定を守り確実にする。一方で法律は権力を認め形成する。他方で、人間のもつ価値、人間が必要とする価値、人間が支持する価値を認め記して広めるので、社会の成員は法律によって自らの合法的な利益を守る条件を手に入れる。

生命、財産、名誉と人格、自由、平等、公平などの安全について、社会の利益のような社会的問題については、すべて法律の調整に関係する。まさにそのために、法律は1つの社会の存在と安定に欠くことができない方策なのである。

他方で、法律はまた、道徳の形成の基礎であり拠り所である。道徳の基本的な原則は、体制化されて法律の規範として成立する。あるいは別の言い方をすると、道徳と法律の間には内容の面で並列関係がある。そのため、法律は公平性、人道主義、自由、信頼、良心を守り、道徳を保護・発展させる。

法律と道徳の間には、公平、善悪、人道、自由の観念について対立する事項はない。法律の役割は、社会の前面にある道徳の義務を強固にすること、社会に敵対する表現への非容認の態度を強固にすること、家族の幸福、青少年の教育を守ること、同士の援助すること、実直さ・まじめさを奨励することである。

人文の発展の環境を整えるために、国家は法律を通過させ、例えば文化、教育、科学、工芸の発展政策のような、人文の発展の環境に必要な政策を実施する管理機構を設け、民主的な体制を確立し、個人の自由の権利を守る必要がある。

この体制と機構は、社会で人文が発展する体系をつくる。そうであれば、法律は、一方で基礎であり、他方で人間の真、善、美を発展させる方法であるという重要な役割を担うと認めることができる。

### 1.2.3. 法律は社会発展を擁護する

国家は、社会の自己防衛とともに自らの法律擁護活動を通じて、法律がその権利と利益の侵害を免れるように調整する、最も重要で基本的な社会関係の擁護を進める。もしこの役割が不足すれば、法律は完全には成立しないし、社会関係は容易に侵害され、各主体の間の平等は失われる。これは独裁者がいる社会、あるいは無政府状態の社会で起きることであり、そのような所では法律は自らの公民を法律違反から守ることはできない。

#### 1.2.4. 法律は国家の効果的で重要な管理の道具である

上記に分析したように、法律は国家が制定し擁護する...しかし見方を変えれば、どんな国家も社会に対する自らの管理を実現するために法律を必要とするということもできる。国家は、多様な道具、方法を使って社会を管理、統治する。しかし、国家の最も効果的で特別な道具は依然として法律である。法律がない国家の管理、統治は考えられないといえる。

国家は、処罰、取り締まり、強制を目指し、社会を支配階級に利のある秩序におくためだけでなく、古い社会関係、古い生活様式を作り替え、経済、文化、社会、教育、科学、工芸のすべての分野の処理と建設を組織し、社会関係が客観的な経済法則に合わせて発展を始めるように道を開くための重要な道具として法律を使用する。

このように、今日我が国の法律については、強制機能、処罰機能のみに役割の範囲を狭めず、社会の発展、とりわけ国の経済の発展を導き、勧め、促進し、調整する役割を与えることが重要である。別の言い方をすると、法律は発展を始めた経済関係のための環境を作り出す。

この意味で、我が国の法律は「国の現代化と工業化の実現、環境保護、社会の公平と進歩の実現、文化の発展ときつく結びついた経済、国際的に統合し、国際的に協力し、能力が発揮でき、自主、独立した経済の建設（2013年憲法第50条）」において、現在非常に重要な役割を担う。その要求に応じるために、法律は、公民のすべてに寝食のための多様な機会をもたらす発展した経営、合法的な所有権の保護、合法的な収入源の保護のような法に従った経営の自由な活動に有利な法的環境を作らなければならない。他方で、法律は、国家が市場経済を調整する基礎をつくり、国家が定められた目標に従って発展するように促し、市場経済の性質に反する面を制限し、克服する。法律はまた、国家が経営活動を調べ、法に反するすべての経営行為を処罰し、生産、分配の公平性を実現するための道具でなければならない。

国家管理における法律の重要な役割は、国家管理、特に国家機構の全機関に力を最大限に発揮させることを目指して、経済の国家管理の法的基礎を確立し、強固にし、完成させることである。

法律は、組織と活動の原則、同時に国家機関と国家の公職、役人毎の権限を明白に定めなければならない。したがって、我が国の今日の法律は、立法活動から行政・司法活動までにおよぶ新しい管理構造でなければならない。

上記の分析から結論できることは以下である：すべての国家同様、我が国も法律を自らの管理役割を果たすための主な道具として使用しなければならず、法律を使った管理作業は国家の管理作業の1つの特徴である。

### 1.3. 法源

法理学においては、法律の形式の概念以外に、法源の概念がある。現在、法源の概念は2つの方法で確認することができる：内容による方法（通常法律の作成において確認できる）では、法源とはそこから法律が形成されるものである；形式による方法（通常法の実施と適用において確認される）では、法源とは法律の各規定が納められている所であり、つまり以下の質問の答えが法源となる—法律の規定とは何か？適用のためにどこから取り出すことができるのか？この場合、法源とは法律の外側の形式に近い意味で用いられているといえる。

#### 1.3.1. 直接的法源

##### -慣習法

ブラック法律辞典によると、慣習（custom）とは、「長期にわたり公の承認を受け長期間存在することにより、変化せずに法律のような効力をもつようになった習慣」である<sup>11</sup>。そして、この辞典は以下のようないくつかの慣習に言及する。一般の慣習とは、同意を通じてのみ直接実現される習慣である。同意した者たちの間の一般の法律のように、個人の特別な場合において受け入れられ守られ、同時に風俗と呼ぶことができる；公の慣習とは、2つの意味をもつ。1つは全国に広く行き渡っているもので、国の法源の1つとなる。もう1つは貿易において公認され守られているものである；慣習の法律は、法律のような強制的な規定として存在し、それに関係する主体のどんな妥協にも従わない慣習で、通常狭い意味での慣習である；地方の慣習とは、1つの都市や県のような一定の地域でのみ広く行き渡っている慣習で、その地域において

<sup>11</sup> Black's Law Dictionary. Seventh Edition. Bryan A. Garner. Editor in Chief. ST. Paul, Minn., 1999, 390.

のみ法源となる。これは特別な慣習、特殊な慣習と呼ぶことができる。この辞典は、また、慣習と風俗 (custom and usage) にまで言及し、それを、変わらない習慣であり公の習慣であると公衆が認めた公の実践であり規定であると説明している。

上記の概念によると、一般の慣習、公の慣習、慣習の法律、地方の慣習のようなすべての種類の慣習は、どれも法源となることができる。

このように、慣習法は、国家が法的価値があると認めた慣習で、公の処理規則となり、国家が実現を保障するものである<sup>12</sup>。国家が社会関係を調整する必要がある時、通常国家は法律を發布する。しかしながら、多くの場合、国家の調整を必要とする社会関係は慣習の規範によっても調整される。このため、もし国家の社会関係を調整しようとする目的に慣習が合っていれば、多くの国家は、承認という方法により、国家が実現を保証する公の強制力をもつ処理規則としてその慣習をすえる。こうして、慣習法は、以下の2つの方法——あらゆるケースのための原理的な規定<sup>13</sup>、あるいは具体的なケース毎の詳細な規定<sup>14</sup>——のうちの1つによって、国家に承認された強制力をもつ慣習規範それ自体と見ることができる。

2005年の民法(BLDS)において、我が国はいくつかの慣習を承認した。この承認作業においては、以下の第3条で表現される原則的規定を先ず通過させた。「法律に規定がなく、双方に同意がない場合には、慣習を適用することができる；もし慣習がなければ、法律の類似の規定を適用する。慣習と法律の類似の規定は民法の規定原則に反することはできない。」

#### - 前例法

前例法、あるいは前例(判例)に従った審理の法律は、行政機関の各決定を国家が承認する形式であり、また類似の事件に対して運用するための具体的な事件の審決のことである。この形式はかつての奴隷制の国家で使用され、封建制国家で広範に使われ、今でも特にイギリス、アメリカの資本主義国家で依然として重要な位置を占めている(特に民法において)。

前例法は立法機関の活動ではなく、行政と司法の活動から作成される。このため、その形式は恣意的になりやすく、法制の原則と何ら関係がないことが多いため、

<sup>12</sup> 『国家・法律概論演習』ハノイ国家大学法学部, DHQG, H (国家大学, ハノイ) 出版, 2005年, p. 307

<sup>13</sup> 例、洪徳条律第40条は以下のように規定する。「山岳地帯の人々の間で犯罪があったときは、その地方の慣習に従って裁く。山岳地帯の人々が平野部の人々に罪を犯したときは、法に従って裁く。これは原則性をもった規定である。」

<sup>14</sup> 例、2005年ベトナム社会主義民主共和国民法第28条は具体的な場合の規定である。

最高位の法律の原則を重視しなければならないし、法律の作成と実施における国家機構の中の各機関の権限と職務を明らかに分けなければならない。

しかしながら、かつての時代（特に革命後）の最初の過程において、実際上は、いくつかの公の仕事をすぐに解決しなければならないという革命の要求を前に、法律体系はまだ完全に作成されていなかったため、各社会主義国家においては依然としてこの形式が使われた。しかし、それは、党の政策路線と法律の基礎の上に上手く適用された。法律体系が完全に作られた時、その形式は階級主義国家には存在しないものであった。

ベトナムでは、ベトナム共和制の下、前例法は民法の分野の1つの法源と見ることが出来る。当時のベトナム北部、その後のベトナム社会主義共和国で、前例法は正式な法源として承認されなかった。しかし、実際は、それは上級裁判所の「審理の手引き」として形を変えて依然として存在した（存在する法的「穴」を埋めるために）。

現在、遠くない将来を感じさせる分かりやすいシグナルがあり、前例法は正式な法源、公認の法律の形式となるだろう。具体的には、最高人民裁判所が（民事と刑事についての）裁判長の決定を二巻本にして出版したこと、世界進出の要求への対応を目指したベトナム共産党政治部の判例の発展路線をその証拠とできる。政治部の2010年までのベトナム法体系整備・建設戦略についての2005年5月24日の第49号決議は、「判例の開拓と使用の可能性... および法律に補足的な貢献と完全な貢献をする職業協会の規則についての研究」を2020年までの方針と定めた。

#### - 法規範文書

これは法律の最も重要で基本的で主要な形式面の法源であり、ベトナムの各国家機関は、自らの権限に属する実際の法的な事柄を解決するとき、主に法規範文書(VBQPPL)に従う。法規範文書は、権限をもつ各国家機関が、法が定めた手続き、順序に従って発布する文書で、その中には、社会主義の方針に従って社会関係を調整する事を目指して国家が実現を保障する一般的な処理規則がある。

我が国の法規範文書は、高位・下位の異なる多様な法的価値を含んでいる。法規範文書体系における法的価値の最も高位のものは、憲法、基本的法律、国家の基本法である。続いて、各法律と国会の議決があり、さらに法令、国会常任委員会の議決等がある。



法規範文書は、法律作成活動の結果として形になるもので、相対的に高度な科学性をもった共同体の知的な表現である。その各規定は成文化されているため、常に明瞭で、具体的で、広い範囲で統一的に理解され実施される；そのため、法制原則の基本的要求に応じるための有利な条件をつくる。さらに、法規範文書によって、人生の要に時宜を得た対応が可能となり、それは現在の我が国の法律の中で最も重要で主要で基本的な形式面の法源と考えることができる。しかしながら、法規範文書は、以下のように克服を要する一定の限界を有しており、法律の唯一の形式面の法源ではない：その各規定は通常高い一般性を帯びており、したがって多くの場合、人の一生に生じる調整が必要な条件、状況は全く予測できず、したがって次第に法律が不足した状態、あるいは法律に穴、空白が生じた状態となる。法規範文書の安定性は相対的に高いので、他の法源より融通がきかない。法規範文書の作成と施行の規定は、いくつかの他の法源と比べて無駄が多いく長い。

法規範文書は、形式面の法源であるだけでなく、法律の内容面の法源といえることができる。したがって、内容について見るならば、法的価値のより高い文書の各規定は、法的価値のより低い文書の内容面の法源となる。例えば、憲法の各規定は、他のすべての法規範文書の内容面の法源となる。なぜなら、それらの文書にある各規定は、多くの場合憲法を現実を実現することを目指した具体化と細目化において、憲法の各規定の基礎の上に作成され、施行されており、またそのどんな法律も、その実施を導く各決定の内容面の法源となるからである。

ベトナムでは、法規範文書の体系は以下を含む<sup>15</sup>。1) 憲法、2) 法律、国会議決、3) 法令、国会常務委員会議決、国会常設委員会とベトナム祖国戦線中央委員会主席団の合同議決、4) 国家主席の決定、命令、5) 政府の議定；政府とベトナム祖国戦線中央委員会主席団の合同議決、6) 政府首相の決定、7) 最高人民裁判所審判会議の議決 8) 最高人民裁判所裁判長の通達、最高人民検察院院長の通達、大臣・省機関の長官の通達、最高人民裁判所裁判長と最高人民検察院院長の合同通達、大臣、省機関の長官と最高人民裁判所裁判長、最高人民検察院院長の合同通達、国家会計検査長官の決定、9) 省・中央直轄市[城鋪 thành phố]（一般的に省レベルと呼ぶ）の人民会議の議決、10) 省レベルの人民委員会の決定 11) 特別行政-経済区における地方政権の法規範文書 12) 県・郡・市[市社 thị xã]・省直轄市[城鋪 thành phố]・中央直轄市[城鋪 thành phố]（今後

<sup>15</sup> 2015年法律規范文書施行法(BHVBQPPL)に従う。

は県レベルと呼ぶ) の議決 13) 県レベルの人民委員会の決定 14) 社・坊・市[市鎮 *thị trấn*] (一般に社レベルと呼べる) の人民会議の議決、15) 社レベルの人民委員会の決定。

規範、法律を納めた文書で、法規範文書施行法の中の規定の手続き、秩序、形式、権限が正しく行なわれていないものは、法規範文書ではない<sup>16</sup>。

### 1.3.2. 間接的法源

#### - 政治・法に関する思想・学説

法的学説、思想も法律の内容面の法源となることができる。例えば、我が国の現行の憲法第2条は以下のようなものである。「1. ベトナム社会主義共和国は、人民の人民の、人民による、人民のための社会主義的法治国家である。2. ベトナム社会主義共和国は人民が主人となる国家である；すべての国家権力は、労働者階級と農民階級及び知識人層の連合体に基礎を置く人民に帰属する。3. 国家権力は統一されており、立法権、法執行二権及び司法権それぞれの実現において、各国家機関間で配分、協同、抑制される。」

この憲法の規定は、国家と法律についてのマルクス・レーニン主義の思想とホー・チ・ミン思想、人民主権の思想、法権国家思想を継承し、国家権力分権の学説の合理的要素を受け入れた基礎の上に作成された。

#### - 道徳

道徳は、人間の人生そのものに源を発する実際の間接的関係を反映する1つの社会現象である。道徳は、世界、生き方について、一定の人間の集合体、1つの社会のいくつかの意見を集めたものである。道徳によって、人間は自らの行いを社会共通の利益に合うように調整する。

そうであれば、法律と道徳は、社会の生活を管理し、人民の能力と徳と人格を教育する上で共通の目的をもつ。我々の社会には、親子、夫婦の間の相互の義務のような、道徳的規則であり法律規範である処理規則が大変多くある…。多くの場合、法律と道徳は人間の行為について同一の評価をする。

法律と道徳は根本的に異なる点をもっているが、道徳規範は、人間の行為の調整において法律規範の限界を補う貢献をする。

<sup>16</sup> しかしながら、この法律は憲法施行、憲法修正については定めていない

道徳は法源の1つと見ることができる。なぜなら法律は、法律に係る主体の行為を調整する価値をもつ道徳規範を承認するからだ。例えば、2005年民法128条規定は以下のようなものである。「法律禁止規制に違反し、社会道徳に反する内容をもつ民事取引は無効である。法律の禁則とはある主体に一定の行為を許可しない法律規定をいう。社会の道徳とは共同体に認められ、尊重される社会生活における人間同士の共通の行動基準をいう。」

この法律は、道徳の尊重と良い伝統は民法の基本的な原則であると規定する。「民事権・民事義務の確立及び履行は、民族の特色の保護を保障し、またベトナムに住んでいる諸民族の風俗、習慣、よい伝統、団結、相互扶助、相愛、一人が共同のため・共同が一人のためという精神及び崇高な道徳の価値を尊重し、発揮させるものでなければならない。少数民族は、自分の物質的・精神的な生活水準を一步ずつ向上させるために民事関係において有利な環境条件がもたらされる。民事権・民事義務の履行において高年齢、子、身体障害者を扶助することが奨励される。」<sup>17</sup>

道徳を法源と見なすとき、法律は道徳の基礎の上に、道徳に合致するように作成される。そうであれば、法律は人心に合致し、実施は易しい。法律の内容は、道徳の精神と内容で満たされなければならない。法律は、社会の発展に合致するような進歩的な道徳の規則、道徳的観点、道徳の思想を保護し強固にしなければならない。逆に言えば、法律は、法律に厳しく明確な実現を自覚させる条件をつくる。

- その他の法源

+ 党の政策と路線、国の経済-社会の管理要求はベトナムの法律の内容面の法源と見なすことができる。

党の政策と路線は法律の内容面の法源と見なすことができる。なぜなら、党は、一定期間の国の経済-社会発展の目標と方針、その目標と方針を実現するための基本的方法を定めるからだ。その目標、方針、方法は、国家に体制化されて法律となり、実際に実現される。憲法、法律から法律の下位にある文書まで、各法規範文書(VBQPPL)の各規定内容は、党の政策と路線にいずれも合致し、それに反してはならない。

+ 国の経済-社会管理の要求も、重要な内容面の法源の1つであり、法律を作成し施行する基礎の1つである。社会主義の方向にしたがって市場経済を組織・管理・

<sup>17</sup> 2005年民法第8条。

処理するために、国家は、各種の市場（労働市場、商品市場、不動産市場、財政市場）が足並みを揃えることを目指して、具体的な法律の規定を発布しなければならない。それは、財政、税、貨幣、価格、投資、収入についての政策の具体化であり、また、国家が望む方向、社会-経済関係の均衡と安定を強固にし、また保障する方向での経済分野の整理と再組織化、経済関係の調整である。

+ 国際条約、職業協会の規則は、ベトナムの法律の法源と見ることができる。

国際条約「各国家間で締結された1969年の条約法に関するウィーン条約と現行の国際法の規定によると、制定された国際条約は、各国家と国際法の主体の間において文書の形式によって締結され、国際法によって規律される国際的な合意である。それは、単一の文書によるものであるか、関連する2つ又は多くの文書によるものであるかを問わず、また名称のいかんを問わない。」一般的には、ベトナムが実際に締結、批准、あるいは加入した国際条約は、我が国の法律の形式面での法源であると同時に内容面での法源でもある。それは、その各規定が転化して法規範文書の規定となった場合に、内容面の法源となる。例えば、我々の女性差別撤廃についての国際条約(CEDAW)への加入は、性別についての平等法の発布につながり、この国際条約の多くの規定がその中で具体化された。その他の国際条約の多くの規定は、転化してベトナムの法律となっている。特に我々のWTOの加入の際にはそうであった。

国際条約は、実際に生じている事態の解決に、そのすべてあるいは一部が直接適用された場合には、法律の形式面での法源となる。その適用は、我が国の2005年の国際条約の締結・加入・実現についての法律において承認された。

一般的に、国際法の分野では、国際条約は最も重要で主要で基本的な法源である。他方、国家の法律に対しては、特に現在のグローバル化の下、国際条約の役割が日々重要となっており、その地位は日に日に高くなっている。そのことは、我が国の現行の多くの法規範文書に挙げられる規定の中で明らかである。「ベトナム社会主義共和国が締結、あるいは加入した国際条約が、この文書の規定と異なる場合には、その国際条約の規定に従うこと。」

**職業協会の規則**：この法源の草案は、政治局の2005年5月24日の2020年までのベトナムの法体系の整備・改善のための戦略を記した第48号決議において提出されたばかりである。決議は「法律の補完と改善に貢献する職業協会の規則と判例の活用の可能性についての研究」をあげている。このように、この法源はベトナムでかつて前例のないもので、国からはまだ正式に認められていない。ただ、政治-社会組織の規

定のいくつかの文書において間接的に認められ始めただけである。例えば、1998年に定められた幹部法令（2003年に修正、補完）、2008年に定められた幹部法令は、政治-社会組織、政治組織で任期付きの職務を負う人々、幹部、公務員、社レベルの政治-社会組織の指導者、党の委員会秘書、副秘書の投票による承認を通じて、政治-社会組織の規定で間接的に承認され、法律の形式面での法源の1つと認められた。それによると、この種の幹部と公務員がもし組織の規律に違反したら、処理についてはその組織の規定が援引され適用される。

職業協会の規則については、理論面と実践面で明らかにしなければならない問題は、各職業協会の規則のいずれが法源の1つとして認められるかであり、何の問題について、いずれが社会関係調整の規則となるかである。一般的には、これはかなり新しい問題で、我が国の法源の1つとしてその承認を決定する前に慎重に検討される必要がある。

#### 1.4. 世界の法体系

200を越える国家と領域がある今日の世界は、文化と民族の文化的特色の面で高度に多様化している。このことにより、政治・経済・社会制度は異なるものとなり、同時に、各国家の法体系は特色あるものとなる。

しかしながら、法律の伝統的な方法と法的な方法の下に総体的に見れば、世界の各国家の法体系はほとんどすべて以下の3つの法体系の1つに数えることができる。英米法体系 (Common Law)、大陸法体系 (Continental Law) イスラム法体系 (Islamic/ Muslim Law)。

##### 1.4.1. 英米の法体系 (Common Law)

この法体系の他の呼び方として、アングロ-サクソン法体系、通律体系がある (Common Law)。

英米法は、イギリスから始まりアメリカ、英米の植民地の国々で発展した法律である。これは慣習 (custom) 法から発展した法律体系であり、慣習法体系、判例を重視する法体系 (precedents/ judge made law) と言うこともできる。

今日コモン・ローは3つの異なる意味で理解する必要がある。

- 第一、英国法体系の上に築かれた、世界的に大きな法体系である。
- 第二、法源の面では、コモン・ローの判例 (Case law) は裁判所を出され、議会の法律とは区別される。

- 第三、裁判所の体系の面では、コモン・ローの裁判所と判例は、エクイティの裁判所と判例と区別される。

形成史：この法体系は、1066年にノルマン人が英国を占領し、ウィリアム王が新しい宮廷に権力を集中したことに端を発する。「共通の法律 (Common Law)」という単語は、封建的封土・荘園の裁判所、あるいは各地方で適用された地方の慣習法ではなく、王が設置した裁判所が王国の共通の慣習 (Common Custom) を適用した観点より導かれる。

共通の法律の強固な原則は、ヘンリー二世 (1133 - 1189年) が設立した3つの裁判所、税をめぐる争いを処理する財務府裁判所 (Court of Exchequer)、王の権利に直接関係しない問題を扱う人民間訴訟裁判所 (Court of Common Pleas)、王室の権利に直接関係することを解決する王座裁判所 (Court of the King's Bench) で作られた。

実質的には、ウィリアム王の時代以前に、イギリスの慣習は大陸ヨーロッパのドイツの文化の影響を多少なりとも受けていた。当時の裁判所では、争いの解決のために民会が招集され、もし判決できなければ、被告に焼けた鉄を握らせる、熱湯に入った石をつかませる、判定毒の方法などの試罪法 (ordeal) がとられた。もし傷が所定の期間内に治ったら、被告は無罪であると広く伝えられ、元の生活に戻った。

1154年、ヘンリー二世は、共通法の体系を作り、強い権力をもつ統一された裁判所のシステムを新たに作った。そして、裁判官を王座裁判所から国のあちこちに赴かせ、争いの解決方法を収集して選別させた。その後、それらの裁判官はロンドンに戻り、他の裁判官とそれらの争いについて議論した。その判決は記録され、次第に判例 (precedent)、あるいはラテン語に従えば stare decisis (先例拘束性 (の原則)) となった。それによると、裁判官は、審判において先に出された判決に従うことが求められる。「コモン・ロー (共通の法)」という術語は、この時代に出現した。そのように、議会がイギリスの法の歴史に登場する以前、コモン・ローは数世紀の間王国のすべての地域に適用された。

「コモン・ロー」が事件を解決するのに十分でないという法的状況が生まれた15世紀に至り、訴えをおこす者はコモン・ローの解決法では不十分であると考えられるようになった。例えば、土地に関する訴訟において、当事者は、コモン・ローの解決法にしたがった金銭賠償は、無断の侵奪行為に対する賠償として不十分であると考えた。人々は、さらに不法占拠者が追放され、侵奪した土地を返すことを要求した。まさにこのことが新しい体系が誕生する基礎となり、ここにエクイティ (system of equity)

の体系が誕生し、同時に大法官 (Lord Chancellor) が司るエクイティの裁判所の体制が生まれた。本質的な面では、抵触事例ではエクイティはコモン・ローに比べて優勢である。このことは、1873年と1875年の裁判管轄法 (Judicature Acts) に示されている。

今日では、コモン・ローの体系の特別の法源としての資格をもつ判例の他に、成文法と各種規則もこの法体系を構成する一部と見ることができる。コモン・ローの法体系にしたがっている国々は、審判の際に、客観性の問い (question of fact) と広い意味での法についての問い (question of law) の2つの問いを通常拠り所とする。どんな事件も、コモン・ローの審判の際には、すべて判例、制定法、処理のための実際的な根拠にしたがって裁かれる。

判例を使用する法体系では、判例は議会で作られた法律に並ぶ法律形式として通用する。

このように、英米法体系では、裁判所での処理が多く実践され、裁判所は処理機関だけでなく、判例によって法律をつくる機関と考えられる。この法体系は、行政訴訟と行政手続きについての法律と法形式を大変重視する。英米法体系は開かれた法体系ということが出来る。なぜなら、議会が発布した法律の他に、この法体系は新しく作られた法律を実際に適用して法律の一部としているからである。

英米法体系はローマ法の影響を多く受けていない。この法体系においては、公法と私法の分立はない。

英米法体系は、イギリス、アメリカ、そしてラテンアメリカ各国、アフリカのいくつかの国、インド、オーストラリア、ニュージーランド、パキスタンのような英国法の影響を受けた国々で用いられる。

#### 1.4.2. 大陸ヨーロッパの法体系 (Continental Law)

市民法体系 (Civil Law)、あるいはより簡単に仏独法体系と呼ぶことができるこの法体系は、世界でも最も大きな法体系で、ヨーロッパ大陸諸国とヨーロッパ以外のいくつかの国々で使用され、世界の多くの国々に広く影響を与える。

この法体系は、フランスとヨーロッパ大陸のいくつかの国の法体系を基礎とする。その中では、フランス法が最も重要で、この法体系をもつ国々の法律に大きな影響を与える。それら各国の法体系は、そろってローマ法の影響を受けているといえる。今日、市民法の影響のある地域は相対的に広く、大陸ヨーロッパの各国 (フランス、ドイツ、イタリアなど)、ケベック (カナダ)、ルイジアナ (アメリカ)、日本、そしてラテンアメリカのいくつかの国 (ブラジル、ベネズエラなど) を含む。

形成史、ゲルマン諸部族 (Germanic) が西ヨーロッパの国々に大移動したとき、ローマ法のいくつかの規定はゲルマン法に代えられた。しかしながら、ゲルマン法の根本は、領地の要素ではなく個人の要素に拠っていたので、旧ローマ帝国の民衆とその末裔は、ローマ法の使用を許された。ローマカトリック教会も、古いローマ法の維持に重要な貢献をした。教会法、つまり教会裁判所で使われた法律は、ローマ法にしたがって作られたからである。11、12世紀に入ると、市民法大全の「学説彙纂

(Corpus Juris Civilis)」が発見され、学者により研究と解説が始まり、古い法律の内容は当時の社会状況に合うように再編された。パリ、オックスフォード、プラハ、ハイデルベルク、コペンハーゲンで法律学校が開かれ、教会、王、ヨーロッパのすべての支配地域のために弁護士が養成された。1つの内容にしたがった共通の養成によって、ヨーロッパ各国の法律家は、ローマ法という共通の基礎の上に自国の民法を作った。

今日、法学者は、市民法体系を異なる3つのグループに分けて考察し比較する：  
+フランスの市民法：フランス、スペイン、旧フランス植民地。

+ドイツの市民法：ドイツ、オーストリア、スイス、ギリシャ、日本、韓国、中華人民共和国（注：中華人民共和国とベトナムの法律は、現在は学術的には社会主義法体系に分類される。しかし、実際には、民法、訴訟、裁判所の体系に関する多くの規定が多く市民法の特徴を備えている。）

+ スカンジナビアの市民法：デンマーク、スウェーデン、フィンランド、ノルウェー、アイルランド。

ヨーロッパ大陸の法体系はローマ法とローマの法哲学の影響を強く受けており、法律は公法と私法に分けられる。

ヨーロッパの法体系は、最も完成した成文法の体系であり、世界の法体系の中でも法典化の程度が高い。この法体系は、英米法体系と違って判例を重視しない。判例を一般に用いられる形式とは考えないで、限られた範囲で用いるのみである。慣習法に対しても同じ態度がとられる。

ヨーロッパの法体系は、フランス、イタリア、スペイン、ポルトガル、ドイツ、オーストリア、ベルギー、ルクセンブルグ、オランダ、スイスのようなヨーロッパ大陸部の国々、アフリカ・ラテンアメリカの多くの国々、日本を含む東洋の国々に存在する。

### 1.4.3. イスラムの法律体系 (Islamic/ Muslim Law)



イスラム教と強く結ばれた法体系で、その正式な法源はイスラム教を信仰する人々の聖典であるクルアーンである。

イスラム法は、イスラム教とイスラム教信者の風俗習慣を基本的な原則、支柱として、その基礎の上に成立する。世界の他の法体系と異なり、それは、独立した科学的分野ではなく、イスラム教の一部にすぎない<sup>18</sup>。それは、宗教的規範と道徳と法律が混合した法体系である。それは、一方で社会がどのような行為が悪であり善であるのかを判断するための基礎であり、他方で裁判官が合法的か否かを検討するための法的基礎である。

イスラム法の思想は、西洋の法律の思想とは完全に異なっている。西洋の国の多くは、法律を自らの立法機関を通じた人民の意思の表現であると見なしているが、イスラム教の法律は、それを、偉大な預言者ムハンマド—アッラーの忠実な使徒である—の出現を通じたアッラーの意思である<sup>19</sup>と考える。

イスラム法体系の法源は以下を含む：クルアーン—114の章、30巻に分けられる6,237の節から成る聖典で、民事、結婚・家族関係、刑事、訴訟、商業・財政、国際関係についての調整規定、法的原則を含む<sup>20</sup>。スンナ—伝統的な風俗習慣。コーランは旧約聖書でスンナは新約聖書のようにであると比較することができる。イジュマー—司法権のある人々の合意。キヤース—法律の類推、推論。

上記の4つの法源の中では、コーランとスンナが正式の法源で、イジュマーとキヤースは副次的な法源である<sup>21</sup>。

クルアーン（イスラム教徒はシャーリアとも呼ぶ）によると、人間の行為は5つの種類に分けられる。a) 子どもの扶養、納税義務のような義務行為 (obligatoire)。b) 病気の友人を見舞う、貧者を助けるなどの推奨行為 (recommandés)など。c) やってもやらなくても構わない行為 (Indifferentes)。催し物への参加、健全な気晴らしのような、

<sup>18</sup> Les grands systemes de droit contemporains (『現代の法体系』) – Réne David & Camille Jauffret-Spinozi, Edition Preciz Dalloz 1992, p.418

<sup>19</sup> Introduction to comparative law by Konrad Zweigert and Hein Kotz, Oxford 1998, p.304

<sup>20</sup> 各章の長短には大きなばらつきがあり、最も長いものが286節、最も短いものが3節である。各章の順序は内容によってではなく、また時系列でもない。一般的な見解では、初めの章の方が後の章より長く、マッカ（メッカ）で出された章は、マッカ章と呼ばれる（聖典のおよそ三分の二を占める）。マディーナ（メディナ）で出された章は、マディーナ章と呼ばれる（聖典のおよそ三分の一を占める）。この聖典のおよそ200の詩句（三パーセント強）のみが法律に関連するもので、その中に法的原則—民事と結婚・家族の関係、刑事関係、訴訟関係、商業関係、財政、国際関係を調整する規定—が含まれる。

<sup>21</sup> 原文を参照せよ: International law for business by Karolyn Hotchkiss, McGraw-Hill- International edition 1994/bản dịch tiếng Việt của TS- luật sư Võ Hưng Thanh, Nxb. Thống kê 1996, tr. 92 (ベトナム語版, ボ・フン・タイン, 統計出版, 1996年, p.92)

注目したり関心をもったりする必要のないもの。d) 約束の時間を取り違える、期限に遅れる、配慮のないことを言う、礼儀を欠く、正しくない姿勢で歩くというような非難される行為 (*blâmables*)。e) 禁止行為 (*interdites*) : 殺人、財産を奪う、詐欺、泥棒などは、道徳同様に法律面で人間の行為を評価するための基本的な原則と見ることができる。

イスラム法は、イスラム教と強く結びついており、その第一の法源はクルアーンであるため、他の法体系と比べて特別な点が多い。犯罪の軽重の程度によって、クルアーンは犯罪を三種類に定める。

a. フドウド (*Hudud*) : 神に逆らった罪で、以下の7つを含む : 姦淫の罪、偽りの告発の罪、飲酒の罪 (公共の場でも私邸においても)、強盗の罪、窃盗の罪、背教の罪、聖典への違反行為の罪。上記7つの犯罪の中で、姦淫の罪、偽りの告発の罪、飲酒の罪という初めの3つの罪は鞭打ちの刑、強盗の罪と窃盗の罪は、はりつけの刑又は手足の切断の刑、反教の罪、聖典への違反行為の罪は首切りの刑に処される。

b. キサース (*Qesas*) : これは被害者あるいは被害者家族が復讐を求める刑罰である。これは以下の種類の罪が該当する。殺人 (殺意あり、過失を問わず)、傷害 (故意、過失を問わず)、強姦。

通常殺人罪が最も重い犯罪と見なされる他の法体系と異なり、イスラム法においては、神に逆らう罪が最高の重罪とされる。殺人罪と傷害罪は個人に対する罪で、神に逆らう罪ではないと見なされるので、フドウドより重大ではないと考えられる。強盗罪と窃盗罪が手足切断の刑罰、妻の浮気が死刑の刑罰であるならば、そこでの刑罰は身体、あるいは自らの人生をかけて償われなければならない、金銭によっては購えないと認識される。しかしながら、殺人罪ならば、情状鑑定によって、死刑罪かあるいは金銭により償うことができる。イスラム法によれば、男性を一人殺せば百匹のラクダによって、女性を一人殺せば五十匹のラクダによって罪を償うことができる。現代でも、サウジアラビアでは (1988年まで)、罪を償うのに、罪を犯した者は、ムスリムの男性一人の命につき 32,000USD、ムスリムの女性と非ムスリムの男性一人につき 16,000USD、非ムスリムの女性一人につき 8,000USD を支払わなければならなかった。

c. タジール (*Taazir*) の罪 : 豚肉を食べる、嘘をつく、賄賂をする、スパイ行為、猥談をする、淫らな衣服を着る、交通違反... タジールの罪の起訴と刑罰の判断は、裁判所と高位聖職者の決定に属する。刑罰は、投獄、罰金で、通常フドウドとキサースの罪より軽い。

訴訟法（刑事と民事）において、アッラーの前で宣誓することは正直である証拠と見なされる。婚姻と家族関係の分野では、他の法体系で一夫一妻制がとられているのに対し、イスラム法は男性一人に対し妻を四人まで認めている。多くの法律が封建的な思想を強くもっている。しかしながら、この法体系は、現在、人類共通の法律の基準、法律意識に合うように、進歩の趨勢にしたがって改変の勢いになっている<sup>22</sup>。

その一方で、いくつかの国においては、自国の法体系の中に上記の法体系の多様性が入り乱れている。そのような状況において、法律は、公的特徴と私的特徴を、また国家的要素と国際的要素をあわせもつという特徴をもつ。具体的にいうと、それは、個人の権利と公共の自由についての法律であり、ヨーロッパの共同体の法律であり、社会問題についての法律であり、建設法であり、航海法であり、保険についての法律であり、刑法であり、裁判所法（訴訟法）であり、国際的な司法についての法律...である。

上記の角度から法律を認識することは、法体系と公共政策を通じた発展に対する国家の役割の認識を容易にする。

## 第2章

### 法律と公共政策の相互作用

#### 2.1. 公共政策の概念

##### 2.1.1. 公共政策の概念

政策とは、社会生活において大変広く使われる言葉であり、特に政治と法権に関する問題において大変多く使われる言葉である。ベトナム語辞典<sup>23</sup>によると、「政策」とは「公的な政治路線と政策を提出する実際の状況に沿った一定の目的を達成するための具体的な策略・計画である」と理解できる。我々は、一定の角度から政策を理解しなければならないと考える。具体的には、独立したものとして、あるいは上記で述べた政治と法権のような他の範疇との関係の中で検討する。

<sup>22</sup> 参照せよ: PGS, TS. Thái Vĩnh Thắng, Về hệ thống pháp luật hồi giáo, (Nguồn: Tạp chí Nghiên cứu lập pháp điện tử) (タイ・ビン・チャン「イスラム法体系」『立法研究デジタル版』)

<sup>23</sup> 参照せよ “Từ điển tiếng Việt” do Nhà xuất bản Đà Nẵng và Trung tâm Từ điển học ấn hành năm 1997, Hoàng Phê chủ biên, trang 157. (『ベトナム語辞典』ダナン・辞典学センター出版社, 1997年, ホアン・フェ編, p157)

もし政策を静かな現象で、相対的に独立したものとするならば、政策とは、そこに向って到達する必要のある、思想、方向、期待と理解することができる。他方、法律が形式にすぎないとしても、戦略や計画も政策を表現し転載するための方法にすぎない。

そうして、法律の概念に対して、政策はより広い意味で理解される。もし政策と法権との関係においてこの概念の内包を検討するならば、政策の概念は以下の角度から研究される必要がある。

- 政策とは公の政治路線の具体的な表現である。公的な政治路線、与党の政治綱領にしたがって、人々は政策を決定する。

- 政策は、法律制定の基礎となる。別の言い方をすると、法律は政策が体制化した結果である。政策は、新しい思想や状況の変化に合わなければ法律化されないの、まだ法律化（体制化）されない、あるいは全く法律化されない状況もある。しかし、政策のない法律、政策外の法律というものはない。その意味では、政策はまさに法律の魂・内容であり、政策が認められ、「公権力という手」によって「塑造」される際—つまり法定手続きにしたがって国家によって発布される際—には、法律は政策の形式であり、政策の表現方法となる。

- このように、政策は政治権力、与党、公的権力機構である国家と通常強く結びついている。我々はいつも、「党が路線・政策を出し、国家が党の路線・政策を具体化して法律にする」という政治の実行の原則に言及する。しかしながら、与党の政策決定の役割を絶対化する必要はない。政策を立てるのは党の任務で、党は政策を出す権限をもつ唯一の存在である。まさにその通りである。党は政策路線を提出し、その結果国家が体制化して法律と成す。しかし、国家の法律策定と発布はまた、まさに国家の政策の策定と実施である<sup>24</sup>。党の路線と政策は、法律にコピーできるし、その中で具体化できる。しかし、それは、社会の実情に合う新しい思想に合わせたり、新しい要求に応じるため体制化する過程で、調整し完成できる。法律を策定し発布する国家は、党の政策を体制化して法律と成すが、それは同時に政策の策定と完成の一步でもある。そのため、政策と法律は大変近い領域にあり、互いに交差する箇所をもち、国家の法権制度においてお互いに存在の基礎となる。

<sup>24</sup> これは、現在のベトナムの国家機構の組織化において大変明確であり、党の人間は国家機構の重要な地位についたり責任ある立場に立つ（現在の第7期国会の議員のうち党員は93パーセントを占める。政府の成員においては100パーセントが党員である）

### 2.1.2. 公共政策の概念と属性

公共政策とは公共行政学の術語であり、その分野の研究対象の1つにすぎない。歴史的に見ると、公共政策への最初の関心はギリシャ民主制より芽生えたということが、公共政策の研究者により明らかとなった<sup>25</sup>。

公共政策の役割は、法律同様に、国家が社会を管理するために使用する道具の1つである。中央政府あるいは地方政府は、国家あるいは地方の問題をマクロの視点から解決するために公共政策を使う。

公共政策の概念については、ベトナムの公共政策研究者レ・チ・マイ準教授（博士）は、「現在でも世界では公共政策の定義論争は依然として熱い主題であり、広範な意見の一致は難しい。」と述べる。しかしながら、女史によると、公共政策は以下のような第一の基本的特徴をもつ。公共政策を実施する主体は国家である。公共政策は（文書により表現される）決定であるだけでなく、（政策として実現する）実践的行為・行動である。公共政策は、定められた目標にしたがって、経済-社会生活で生じる問題の解決に集中する。公共政策は、互いに関係する政策決定を多く含む。

レ・チ・マイ準教授（博士）は、自らの論文の中で、行政機関・行政組織がその機関・組織の内部の問題を解決するために実施し、その機関・組織の範囲を超えては実施効力をもたない政策である「私的政策」の概念を提示した。そのように、これまでに示した概念と比べて、公共政策の概念には以下のように似た点がある。国家性、公共性、実践的行為である点（実現の過程は公共政策の一部であると見る）。

上記の属性以外に、自らの範囲の中で、公共政策は体系的で、歴史を継承する性質があり、常に具体的な国家と密着し、一定の政治的、文化的、社会的条件と結ばれると女史は論文で述べる。具体的には以下のようなことである。

- 理論と実践の研究は、1つの政策はその内部にお互いに関係する内容をいくつか含み、他の政策に影響し関わりあうことを感じさせるが、それにより公共政策の体系的な性質が作られる。例として、行政改革は公共政策であるが、その中には以下の内容がある。体制改革、行政手続きの改革、国家行政機構の組織改革、幹部・公務員の待遇の質的・量的向上、公的財政の改革、行政の現代化。行政改革の実現は、賃金

<sup>25</sup> 参照せよ: PGS. TS. Nguyễn Hữu Hải – ThS. Lê Văn Hòa (Đồng chủ biên), Đại cương về chính sách công, Nxb. Chính trị Quốc gia, Hà Nội, 2013, tr. 7-10. (グエン・ヒュー・ハイ・レ・ヴァン・ホア (編) 『公共政策大綱』 政治国家出版, ハノイ, 2013, pp.7-10)

の改革という政策、財政-貨幣政策に関連する。それらの例は公共政策の体系的性質を感じさせる。

- 社会発展の歴史は、「巻貝の回転」にしたがった社会発展の法則を肯定した。つまり、社会発展は、常にその内部に歴史を継承したといえる。社会の一部として、国家・公共政策の発展は上記の法則を免れないし、実際にそれは社会と国家の発展に対するマルクスの史的唯物論の正しさをもう一度肯定する。そのように、公共政策は歴史の継承という性質をもつ。

- 公共政策にはその政策の実施活動が含まれるので、公共政策は、それを決定し実施する主体と密接な関係になる。理論の上では、公共政策の一般的な問題の研究でさえも、具体的な国家の公共政策から始めなければならない。そこから、公共政策は、しばしば1つ（あるいはいくつかの）具体的な国家を一定の政治的、経済的、文化的、社会的条件に結ぶことがわかる。そうであるとしても、公共政策の影響の範囲は1つあるいはいくつかの国家の範囲に狭められるわけではなく、大まかな公共政策の概念はどんな国家とも結びつかない。まとめると、公共政策は以下のような基本的属性をもつ。国家性、公共性、実践的行為、歴史継承性、具体的な国家を一定の政治的、経済的、文化的、社会的条件に結ぶ。

我が国では、1945年の建国当初から、人民民主国家の役割を実現するために、党と国家は政策の役割を「ベトナム民主共和国の経済政策は、人民の文化的・物質的生活を向上させる生産の発展を止めないことである」と定義した<sup>26</sup>。その後、ベトナムの憲法にはすべて、経済政策、民族政策、対外政策についての規定が記された。

現在「公共政策」については多くの定義の方法がある<sup>27</sup>。その特徴は似通っているので、公共政策についての概念を以下のように提出することができる。公共政策は互いに関係をもつ決定の集合体であり、そこには、社会の一定の方向への発展促進を目指した、公の問題を解決するための目標、解決方法が含まれる。

公共政策は以下のような役割をもつ。i) 方向を定める; ii) 奨励、互助; iii) 設立; iv) 調整; v) 市場の失敗の修正

<sup>26</sup> Hồ Chí Minh: Toàn tập, Nxb. Chính trị Quốc gia – Sự thật, Hà Nội, 2011, t.12. tr. 372. (ホー・チ・ミン『全集』政治国家-事実出版,ハノイ,2011年,12巻,p372)

<sup>27</sup> 参照せよ: PGS. TS. Nguyễn Hữu Hải – ThS. Lê Văn Hòa (Đồng chủ biên), Đại cương về chính sách công, Nxb. Chính trị Quốc gia, Hà Nội, 2013, tr.14-21. (グエン・ヒュー・ハイ・レ・ヴァン・ホア (編) 『公共政策大綱』政治国家出版,ハノイ,2013,pp.14-21)

公共政策の分類。i) 決定の主体：中央の政策、地方の政策；ii) 実現の形式：法律、白書、議決、議定、通達の形式の下に；iii) 領域：経済政策、科学-工芸政策、教育政策、医療政策、安全-国防政策、財政政策、環境政策...その他に、存在する時間、関係する範囲、処理の性質、作用の性質と範囲にしたがった分類がある<sup>28</sup>。

そのように、公共政策と法律は国家の管理の道具である。しかしながら、公共政策は法律の規定の中に表現されるだけでなく、国家の活動の路線・計画・プログラムにも表れる。大きな政策は、部分的な政策の集合である。例えば、貧困撲滅政策は、国家の目標プログラムを通じた貧者援助政策、貧者への学費減免政策、貧者への医療費免除政策...を含む。そのため、政策評価は通常大変複雑で、総合的な見方が求められる。

## 2.2. 公共政策の法律への作用

### 2.2.1. 公共政策は法律の調整の原則、目標のための基礎である。

法律の調整は、国家が、（調整の道具としての資格をもつ）法律を、提出した目標を達成することを目指して一定の方向にしたがって社会関係に作用するよう使用する過程である。そのような法律の調整は、法律による社会管理の一形態と呼ぶことができる<sup>29</sup>。

法律の調整の目標、原則は、法律の調整過程の第一段階に属する問題である。それによると、調整活動全体の目標、分野毎の個別の目標といった調整目標のそれぞれ異なる程度を明確にする必要がある。そこから、調整目標に合った分野毎や状況毎に応じた調整原則を確定する。

公共政策は、法律の調整の目標、原則の基礎である。公共政策には、経済-社会の現実の活動方向を定める役割がある。政策目標は、公の問題への国家の対応を反映する。よって、それは、国家が求める将来的価値に合致するように大勢を活動させる、国家の社会に対する働きかけの方向を明らかにする。もし社会が政策目標に合うように活動を進めたら、それは公的な発展目標を達成したに等しく、国家の側から援

<sup>28</sup> PGS. TS. Nguyễn Hữu Hải – ThS. Lê Văn Hòa (Đồng chủ biên), Đại cương về chính sách công, Nxb. Chính trị Quốc gia, Hà Nội, 2013, tr. 298. (グエン・ヒュー・ハイ・レ・ヴァン・ホア (編) 『公共政策大綱』政治国家出版,ハノイ,2013,p.298)

<sup>29</sup> Trường Đại học Luật Hà Nội – PGS. TS. Nguyễn Minh Đoàn, Giáo trình Lý luận về nhà nước và pháp luật, Nxb. Chính trị Quốc gia, Hà Nội, 2010, tr. 490. (ハノイ法科大学-グエン・ミン・ドアン 『国家・法律理論演習』政治国家出版,ハノイ,2010年,p.490)

助を受けることができる。さらに、政策の解決方法それ自体も、手段を提出する過程で、経済-社会を方向付ける役割をもつ。

現在、国家の多くは、社会発展のための市場、法権国家、民間社会という三本の柱の育成に向っている。この3つの要素は、3つの領域の間を横断する政策と同時に、分野毎の個別政策議事プログラムに盛り込まれる必要がある。そこから、政策の体制化によって、適切な目標、原則を決定しなければならない。

法律の調整のための基本原則は、以下の通りである。市場の客観的な法則（需要と供給の法則）、市場の互助を尊重すること。国家の社会への干渉を制限し、国家は発展を促進する役割を担い、「小さな」国家、奉仕国家となること。個人の自由（思想の自由、経営の自由、居住の自由）と民主的権利を発展させ尊重すること。国家が政策の内容と法律の調整原則を決定できる時だけ、法体系のモデルを発展に合うようにつくることことができる。法律の各分野では、そこから目標、目的、対象、適切な調整方法が決定される。例えば、国家が、国家が目指す市場構造に沿った商品経済の発展政策を出した時、経営法、民法、国家経営法、合作社法、破産法、税制法...のような法規範文書一式が、政策に合うように新しく作成されるか、あるいは追加、修正される。その過程で、法学の観点からいうと、政策は新しい法体制を作り出す源の1つである。それは、一定の方向へ社会関係を調整するための与党の政治的態度を表す道具である。法規範と成す具体化を通じて、政策は、党の政策から、国家に決定され、実施されるものとなる。

### 2.2.2. 公共政策は法律の調整内容を方向付ける

法律は、社会に対する国家の最も重要で基本的な管理の道具である（広い意味で）。法律の調整内容は、社会生活の決まった領域の法律関係に参加する主体の権利であり義務である。法律が調整する社会の領域、別の言い方をすると国家が管理する社会の領域は、時期によって、政策によって変化する。そこでは、公共政策が、国家の管理の内容と法律の調整内容を確定する役割を担う。公共政策を通じて、国家は、経済-社会の主体の活動に有利な環境を作るための必要な条件を提出する。例えば、労働市場、資本市場、科学-工芸市場、証券市場、不動産市場、サービス市場の発展政策、あるいは、需要と供給のバランス、商品と金額のバランス、輸出入のバランス、投資と消費のバランス、節約と消費のバランスといった、正常で安定的な国の経済-社会発展を目指したマクロのバランスを保障する政策。その基礎の上に、国家は、労働法、科学工芸法（2014年）、不動産経営法（2006年、2014年）、投資法（2013



年)、信用組織法(2004年)、証券法(2004年)...そして施行指導法規文書のような具体的な政策内容を調整する法律文書を発布する。

法体系は、権利と義務、法律関係に参加する主体の権利と義務の実現を保障してその過程を調整し、その中で国家は法律の実現を組織する者としての役割を担う。そのように、公共政策の内容は、法律の調整内容に支配される。それは、公共政策が、生活の中で実現される様式である。

法律の調整内容に影響を与える公共政策のもう1つの特徴は、政策が相対的に安定した性質を有することで、その結果法律は政策を体現して人生の現実に定着する条件を有する。このことは、何度も変わる政策、具体的な道筋のない政策は、法律の作成と実施に困難を引き起こすことを意味する。そのため、政策を策定する者は、政策を生活にもち込むための適用の時間と条件を計算する必要がある。同時に、政策実施の仕事を分割して、具体的な目標と道筋によって異なる段階に変化させ、法律の作成と完成の過程の不利と戦わなければならない。

### 2.2.3. 公共政策は法律の実現過程を方向付ける

法律の実現は、法規定の現実化を目指す活動であり、人々を生活に向わせ、法律の主体の合法的な現実の行為となす。法律の実現は以下の形式を含む。法律の遵守、法律の施行(承認)、法律の使用。

法律の作成の後、法律の実現は法律の調整の第2段階である。それは重要な段階であり、欠かすことができない。法律は、生活の中で厳しく明確に十分に実現され、尊重される時、社会関係を調整し、秩序を維持し、社会が発展するための条件を整える中で自らの役割と価値を発揮できる。

法律を公共政策の内容の体制化と見なすとき、法律の実現は公共政策の実施の方法という意味をもつ。しかしながら、2つの過程は同一ではない。

法律の実現における公共政策の支配は、以下の要素を通じて表現される。

-公共政策の問題の本質: 公的問題の本質は、法律の実現、公共政策の実施への影響を解決するか否かである。小規模な公共政策は、複雑な公共政策より簡単に実現できる(例えば、学校の開設のような)。複雑な、あるいは珍しい公的問題については、その公的問題に関する公共政策の実施、法律の実現は、単に法律の決定/小規模な行政の決定の実現だけではなく、政策の実現の方法についての一連の決定となる(例えば、教育の質と量の向上プログラム)。実現する主体の法律意識、公共政策の認識能力によって、複雑な公的問題がきちんと規定通りに実現されるか否かが決まる。

-公共政策を実施し、法律を実現する主体：実現に多くの組織を必要とする公共政策には、多くの組織、あるいは各組織の多くの部門の合理的な共同と協力が求められる。そうして、法律を実現する組織の仕事は複雑になり、公共政策の性質によって、政治権力に連なる組織の縦横の協力が必要となる。

他方、公共政策は、法律を実現するすべての主体に、私利私欲とは別の利益をもたらす。そのため、公的問題に関する法律、政策の実現において、人々の積極性が引き出される。

#### 2.2.4. 公共政策は法律の評価を方向付ける

法律の評価は複雑な問題である。この問題について、法律と公共政策の相互作用を、法律の調整構造にしたがって考える時、法律評価は、法律の効果についての評価に片寄ることが多い。

法律の効果は、法律が作用（調整）して作られた事実上の結果である。問題についての法律の効果の評価については、希望する目標が達成できたかどうか明確にするために、公共政策の目標と法律実現によって出された結果の間の相関が検討される必要がある。そこでは、公共政策の内容と目標と方策が評価の指標で、人々が法律の効果の評価する方法を決定する。

例えば、貧困削減政策についての法律の評価は、貧困削減政策、貧困削減目標、貧困削減のための各過程、そして施行された法律文書が、進度、内容の面で政策に合っているかを検討する... という総体の中で出されなければならない。

公共政策の方策、内容、目標は、公的問題についての法律の評価の基準でなければならない。政策の外にある法律はないし、政策が法律を逃れることもない。

### 2.3. 公共政策に対する法律の役割

#### 2.3.1. 法律は公共政策の内容を表現する。

国土の発展期において、党と我が国家は経済-社会の発展についての目標、方針、任務、解決法を策定した。法律は、社会、公民、社会の各階層の積極性の発揮、安定の保証、経済-社会の強固な発展を目指す党と国家の政策を体制化する。政策は、その政策の内容が法律用語を通じて表現される時、法的な面で確立する。つまり、その内容は、すべての主体の具体的な権利、義務、責任に対する法的形式の下に確立する。別の言い方をすると、そこでは、法律と公共政策の形式と内容の間に関連がある。例えば、革命功労者への優遇法令。文書の内容は、革命功労者に対する国家の政策を表現する。文書の形式（名称を通じて表現される）は法令である。

そのように、法律と公共政策の間には、類似と相違に並んで、内容と形式について関連がある。法律は、法的形式の下に、公共政策の内容を表現する。しかしながら、そのことは、公共政策を一種の具体的な法律文書とすることとは同じ意味ではない。

しかしながら、注意しなければならないのは、法律は、均衡という点で政策の反映であることだ。そのことは、法律の特徴は基本的で主要な関係を安定性をもって調整し、それを繰り返すことなので、もし安定的な類似と均衡の点を見つけられなかったら、政策を具体化して法律と成すのは難しいという意味である。

### 2.3.2. 法律は公共政策の作成の拠り所であり、具体化と実施の道具である。

政策は法律より社会の現実に対する柔軟性が高い。しかし、法体系が法的規定を作り、基本的な社会関係をほとんどすべて調整するとなれば、政策は、もし法律が欠けていれば影響を發揮し存在できない。国家が示した政策は、法律の規定に反することはできない。そのため、我々は、もし政策に関連する領域を調整する法的規定を把握していなければ、実現可能性のある効果的な政策を作成できない。

例えば、1992年憲法第5条には「国家は全体的な発展政策を実施し、少数民族の同胞の精神的・物質的生活の向上を徐々に進める」という規定がある。この規定から、第135号、第137号プログラム...少数民族同胞のために用意された政策が策定、実施された。あるいは、2010年の障害者法（法律番号：第51/2010/QH12号、2010年6月17日通過）第5条では、障害者に対する国家の政策について規定する。「第1項. 国家は障害者政策実現のための財源を毎年確保する。第2項. 先天性障害、災難、怪我、疾患による障害、他の危機による障害の減少、予防をはかる。第3項. 社会の保護と援助；健康管理、教育、技術の教授、仕事、文化、体操、娯楽、公的事業と技術情報に接すること、交通機関の利用において障害者を援助する。；社会の保護と援助、障害者の子ども・老人との助け合いの政策の実現を優先する。第4項. 経済-社会発展政策に障害者政策を結合する。第5項. 障害者が職能を回復し、困難を克服し、独立して生活し、共同体に入るための条件を整える。第6項. 障害者を介護し、相談を受ける仕事に従事する人の訓練と養成。第7項. 障害者の援助活動の奨励...。」

法律は、公共政策を実施するための法的根拠であり、その所在を明らかにし、公共政策を実現させる体制成立のための法的基礎をつくる。法律は各社会体制、家族が公共政策に参加することを奨励する（社会化）。

国家は、公共政策が影響する対象を正確に、十分に認識するという基礎の上に、各国家機関の適切な管理の形式、方式、方法を法律によって策定する（一般的に）。法律は、国家の公共政策の問題への管理を、国家の公共政策諸問題管理機関の組織・処理に関する問題の策定を通じて効果的なものとし、公共政策分野の客体に合った特徴的な管理方法・形式を規定する。

法律が発布され生活に定着する時、それは社会関係が現行の政策と統一的な方向で秩序をもって展開する助けとなるだろう。法律の実施過程は、対象に公的規定を実施する意識をもたせ、そうして人々も政策を実施する精神を自覚的に発揚する。もし社会の法律と法制がよければ、政策の目標は柔軟なやり方で速やかに達成できる。

### 2.3.3. 法律は公共政策の評価・検査のための法的根拠である。

－ 法律は公共政策評価の根拠である。

公共政策の評価は、政策によってもたらされた現実を見直し、最初の目標と比べることにより、現実の体系的な結果を検討し、希望する目標を達成できたかどうか策定することである。

最も一般的な観点からいうと、公共政策の評価には、行政評価、司法評価、政治評価の3種類がある。その各種類は、実現の方法、参加する主体、各評価の作用において、それぞれ異なる<sup>30</sup>。その中では、司法評価が法律を根拠として最も明確である。

司法評価では、財政、優先事項、効果、指標には関心が払われず、公共政策プログラム実現方法に関連した法的問題に特別の関心がもたれる。司法評価は、政治権力の行動と憲法の条項の間の矛盾、あるいは行政の行為についての規定と個人の権利の間の矛盾に関心をもつ。そのため、法律はこの種の評価の法的基礎となる。

各司法機関は、行政監査の基礎の上に、あるいは個人又は組織が政府組織に対する行政監査を要求して裁判所（行政裁判所）に訴えた時、政府の行動を監察する権限を与えられている。各国の政治権力の行いの監察の理由は非常に異なっているが、進行中の政策が合憲かどうか、あるいは政策の実施、又は発展が、民主社会における自然権、又は公平の原則に違反しているかどうかを考えるとという点では共通してい

<sup>30</sup> 参照せよ: PGS. TS. Nguyễn Hữu Hải – ThS. Lê Văn Hòa (Đồng chủ biên), Đại cương về chính sách công, Nxb. Chính trị Quốc gia, Hà Nội, 2013, tr. 359-363. (グエン・ヒュー・ハイ・レ・ヴァン・ホア (編) 『公共政策大綱』 政治国家出版, ハノイ, 2013, pp.359-363)

る。それは、裁判所が、公共政策が、行政法が認めた原則と規定に合う形で発展し実現されているかどうかを評価することを意味する<sup>31</sup>。

－ 法律は、監査・監察の形式・方法、公共政策実現における違反行為の処理を記す。

法律のこの役割は、公共政策における要求・原則・規定の尊重と厳格で十分な実現を保障することを目指したものである。国家は、公共政策実行の権限を有し、任務を担当する機関・組織・個人、関連する組織・個人に対して監査を行う機関を通じて、公共政策実行において法律違反行為をした機関・組織・個人に対する申立、告訴に時期を得た解決を検討する。

我が国が社会主義市場経済へ移行した時から、集中計画化・配給の時期の公共政策、その実現の構造は合理的ではなくなった。しかしながら、市場経済の建設は我が国にとっては初めてのことで、公共政策の問題について法律を作成し完成させる過程で、以下の傾向を克服する必要がある：

- － 社会政策と経済政策の乖離の傾向
- － すべての社会問題をすぐに解決しようとする傾向

#### 2.4. 法律と公共政策の相互作用

国家の管理活動において、法律と政策という2つの道具の結合は何よりも必要なことである。もし、国家が定めた方向に強制的に社会が動き発展するための法的環境と、法的架け橋を法律が作るならば、政策は経済-社会活動を奨励し、目標に至る方向を定める。この2つの道具の結合により、管理の対象は発展のための内的力を蓄えるだろう。それは、社会秩序の維持を保障するだけでなく、経済-社会の各過程により有利で積極的な環境を作り、対象、地方の間に公平性を作り出し、発展のための原動力、総合的な力の動員を助ける。

法律と政策という2つの道具の結合を作り出すために、法律と政策の間の往復作用のいくつかの側面に注意する必要がある。

その一、法律は時に新しい政策の策定と実施を阻むことがある。原則では、政策は、策定の際に、法律を含む多くの要素を根拠としなければならない。しかしなが

<sup>31</sup> PGS. TS. Nguyễn Hữu Hải – ThS. Lê Văn Hòa (Đồng chủ biên), Đại cương về chính sách công, Nxb. Chính trị Quốc gia, Hà Nội, 2013, tr. 361-362. (グエン・ヒュー・ハイ・レ・ヴァン・ホア (編) 『公共政策大綱』政治国家出版, ハノイ, 2013, pp.361-362)

ら、法律が強固ではない要素で満たされ、実現可能性が不足し、流動的である時、政策は策定を阻まれることがある。

その二、新しい政策の策定は、国家の法体系の一貫性に挑戦する。政策体系が一貫性を欠き矛盾している時、国家の公的政策の間、国家の政策と地方の政策の間に相互に制限がある時、無理に新しい政策の策定と具体化、法律としての成立を押し進めれば、法律の作成・適用は完成せず、効果の保証は難しい。

## 2.5. 憲法-公共政策の法的基盤

### 2.5.1. 憲法に関する観念

今日、憲法の定義は研究者によって様々に異なる。

- 政治-法的事件、政治的機能から見ると、憲法は、憲法が発布された時代の社会における政治力の優劣関係を反映する文書である。資本主義の始まりの時期、憲法は資産階級と封建階級間の政治力の優劣を記した文書であった。王を代表とする封建階級の勢力は時代が下るにしたがって衰退し、政治力の優劣は資本階級と労働者大衆の間で競われた。

Stécnr 教授（ドイツ連邦共和国）は、憲法を、国家組織、組織原則、国家活動、国家と人民の関係、構造、形式の調整を目指す最高位の規定であると見なす

- 内容面から見ると、憲法は国家の最重要の法的規則のすべてである。それは、政体、国家構造の規定であり、国家権力を実現する組織と対応する国家機構のモデルにおける根本的原則であり、国家と人民の間の基本的関係、人権、公民権の規定である。

そのように、憲法は基本的な法律であり、人民が成立させるものであるから、国家の最高位の法的効力をもつ。その中で、人民の権利は尊重され、国家への要求は実施され保障されなければならない。反対に、国家の権力は、まさに憲法のために制限される。人民主権とは、まさに機関が立法・発布した法律と憲法を区別する特性である。法律文書は常に憲法に合致しなければならず、もし憲法に反した場合には無効とされる。

### 2.5.2. 人民-公共政策の決定主体

よく検討すれば、人民は、公に奉仕する公共政策の実現を国家に委任する国家権力の主体であると同様に、公共政策の主体である。

ベトナムでは、国家、すべての国家権力の最高の主体は人民である。国家権力は人民にその源がある。国家権力は、それを掌握するどんな機関、個人であっても、

人民の委任に源がある。もし人民の委任がなく、人民より権利を与えられていなければ（直接あるいは間接に）、国家機関は国家権力をもたない。

このことは、国家と人民の関係において、国家は人民の主人ではなく、人民が国家の主人であり、人民が国家に対する主人としての権利を実現することを意味する。人民は国家の運命、国家機関の運命について、最終的に最も大きな声をもっている。そうであれば、突き詰めて考えると、人民は、公共政策の影響を受ける対象であると同時に、公共政策の決定主体である。

人民は、直接あるいは間接の民主的形式を通じて、公共政策を決定する。

例えば、政治分野における権利は、2013年の憲法が規定する（言論の自由権、報道の自由権、情報アクセス権、集会の権利、結社の権利、デモの権利（第25条）、選挙権、立候補の権利（第27条）、国家の管理への参加権（第28条）国家が行う住民投票への表決権（第29条）、不服申立、告訴告発の権利（第30条）など）。人民は公共政策に対する自らの意思を表現する。

### 2.5.3. 憲法の基本的内容

多くの研究者が憲法の基本的内容を2つの角度から検討する。その第一は、国家の機構、国家の最高機関の規定すべてを含む内容面からである。第二は、形式面からで、憲法は、特別な機関が作成し、他の一般の法律より法的効力が高い特別な文書である。憲法は、政治権力を成立させ、移譲させ、処理する規則・規定である。(M.Pre'lot: *Le Droit Constitutionnel est la science des re'gles juridique suivant lesquelles s'e'tablist, se transmet, et s'exerce l'autorite politique*)<sup>32</sup>

古典的な意味での憲法の基本的内容は、国家権力は人民に帰属するという原理の上に、政治制度の決定のための国家権力の組織化についての文書規定にすぎない。今日、多くの憲法が、人権、公民権、経済、文化、社会制度に規定を広げている。

まとめると、憲法における法律と公共政策の相互作用を認める時、憲法は、政策、国家機関の政策を發布し、違憲か否か政策を審査する法的基準を提出する主体を確定すると言える。

ベトナムでは、2013年の憲法で、政治制度、人権、公民権、経済、文化、教育、社会、科学、工芸、環境、祖国防衛、国家機関の組織化について規定された。

<sup>32</sup> Vũ Văn Mẫu, Lê Đình Chân, *Từ điển kinh tế và luật học, Tủ sách Đại học, Sài Gòn, 1974* (ヴー・ヴァン・マウ、レ・ディン・チャン『経済・法学事典』大学の本棚シリーズ、サイゴン、1974年)を参照すると、旧制度の研究者同様にフランスの研究者も、科学と法律の区別をしていないようだ。

#### 2.5.4. 憲法擁護

憲法擁護とは、国家の法体系における憲法の最高位の法的秩序を保障することを目指し、違憲の事件・行為の検討のための憲法訴訟の構造を整えることである。国家機構の護憲機関の性質と役割に基づいて、護憲機関の権限、事件の検討から判決ができるまで、護憲機関の決定から法的帰結までの順序、手続きなどを検討すると、後述のいくつかの護憲機関モデルに一般化できる。

**非集中モデル (アメリカ型モデル)**：これは、非集中護憲モデルである (Decentralised constitutional control)。非集中護憲モデルは、立法、行政、司法の分立と抑制の学説を基礎に成立する。この学説にしたがえば、裁判所の体系は、公民の法律違反行為を審理する機能をもつだけでなく、立法と司法の各機関の権力を調査し制限する機能をもつ。それによると、憲法の精神あるいは内容に反する大統領令、政府の議定、議員文書が出された時、それらの文書を無効とする機関がなければならない。その機能を担う機関は、立法と行政から独立した機関で—それはまさに裁判所の護憲機能でなければならない。

アメリカの護憲モデルは、政権を司法によって効果的に審査するモデルであり、審査は裁判所での具体的な事件の解決によって始まったので、具体的審査と呼ばれる。カナダ、メキシコ、アルゼンチン、オーストラリア、ギリシャ、スウェーデン、日本などのような他の多くの国も次第にこのモデルを採用した。アメリカの具体的審査モデルは、類似の事件に際して下級裁判所が従うべき判例を作るので、大変効果がある。

**集中モデル (大陸ヨーロッパ型モデル)**：ヨーロッパ大陸部の国々は、司法裁判所に憲法審査を行う権利を与えず、この機能を担う特別裁判所を設けている。それを憲法裁判所、あるいは護憲会議、憲法院と呼ぶ。これが集中審査モデルである。憲法裁判所は、オーストラリアで1920年に、イタリアで1947年に、ドイツ連邦共和国で1949年に、南ベトナムで1956年に、フランスで1958年に、トルコで1961年に、旧ユーゴスラビアで1963年に、ポルトガルで1976年に、スペインで1976年に、ギリシャで1979年に、ポーランドで1982年に、ハンガリーで1983年に、ソ連で1988年に、ロシア連邦で1993年に、カンボジアで1993年に、ベラルーシで1994年に、ウクライナで1996年に、タイで1997年に、チェコ共和国で1997年に設立された。このモデルは、オーストリアで最も早く設立されたのでオーストリアモデルと呼ぶことがで



きるが、ヨーロッパ大陸の方が広く知られているので、通常ヨーロッパ大陸モデルと言われる。

#### ヨーロッパ大陸モデルによる憲法審査の特徴

- ヨーロッパ大陸モデルによる憲法審査は、憲法裁判所あるいは護憲会議を通して集中的に審査するモデルである。
- ヨーロッパ大陸モデルによる憲法審査は、具体的な司法審査であるだけでなく、抽象的な審査でもある。ある規定の合憲性審査の問題は、必ずしも何らかの事件と結びつくわけではなく、大統領、首相、主席、上院議員、下院議員、議員監査、最高裁判所長官、議員の10分の1の代表を含む個人、司法組織の提議にしたがって提出されるからである。その他に、地方会議、省の長官も、地方の権利が侵される時には、法律の合憲性審査を提案する権利をもつ。地方会議が発布した違憲の法律に対しては、大臣がその法律の合憲性審査を提案する権利をもつ。
- 憲法の規定によれば、憲法裁判所の決定の効力については、憲法裁判所が違憲と判断したどんな規範、制度、文書をも含むすべての法律主体に対して強制力をもつ。

**立法機関が護憲機関を兼ねるモデル:** 現在、専門の護憲機関を設けず、司法機関に護憲の権限を与えないで、議院、国家会議、議院の特別機関などに憲法審査権を認める国家がいくつかある。フィンランド、バーレーン、クェート、オマーン、コンゴ、エチオピア、ギニアビサウ、ジンバブエ、ブルネイ、ミャンマー、中国、キューバー、ベトナム、ラオス、朝鮮民主主義人民共和国、パキスタンなどがこのモデルに従う。

我が国では、「その他のすべての法律文書が憲法に合致しなければならない」という原則を保障するために、国家は、以下のような憲法保護の形式を規定した。戦線、人民の権力機関の審査活動、権限をもつ機関が法律文書を発布する前に、草案を決裁する活動（事前審査活動）、文書発布後の審査、自己審査（事後審査活動）…。2013年憲法は、憲法を保護する仕組みを規定した。そのため、護憲の仕組みの研究継続は、人民の、人民による、人民のための社会主義封建国家建設の条件としてベトナムに大変必要とされる。

## 2.6. 法律と公共政策の区別

### 2.6.1. 法律と公共政策の属性の比較

## 法律と公共政策の属性の比較表

法律	公共政策
- 国が法の施行を保障	- 国家性
- 普及性	- 公共性
- 厳格に形式に基づく決定	- 実践的行為
- 系統性、一貫性	- 系統性
- 継続性	- 歴史継承性
	- 特定国に付属

### 2.6.2. 法律と公共政策の区別、発布主体、調整対象、影響対象

	法律	公共政策
発布主体	- 国	- 国
調整対象、影響対象	- 社会の各階層	- 社会の各階層

### 2.6.3. 法律と公共政策の類似点・相違点

#### 2.6.3.1. 類似点

各比較による、公共政策と法律の類似点は以下の通り。

-法律と公共政策の発布主体は国。具体的には政策、法律を発布する権限がある国の機関。例：国会、政府

-調整対象、影響対象は社会の各階層（国民）、例えば：国民、官吏、公務員、労働者。例えば2011年～2020年の国の行政総体改革では行政手続きの改革によって、調整対象は官公庁の幹部、官吏、公務員だけではなく国民、企業、労働者、外国人にも影響が及ぶようになった。

-法律と公共政策の属性に関して、国家的、系統的、継続的、公共的（普及的）といった類似点がある。

#### 2.6.3.2. 相違点

-法律、公共政策の参加主体

+公共政策と法律の属性の比較表を見ると、公共政策は、影響範囲が大きく、他の多く国にも影響を与えるにも関わらず、常に特定な国に付属されている。一方で国家以外の国際法では以下のような主体がある：領域、国際組織、自決権のために闘争してる各民族等。そうすると、主体面（発布主体とは別）から見ても、公共政策と法律の主体、範囲は異なる事が分かる。

+他に、主体に関して、法律と公共政策の相違点は、主体出現のタイミングや主体になるための手順、方式である。公共政策を発布する主体はその政策を発布する時点で確定されるが、国際法（国家法律の一部）の主体は運用中に加入できる権利がある。例：児童の権利に関する条約(子どもの権利条約)は、国際条約として1989年11月20日に採択され、20カ国が承認し、加入が決定した。1990年9月2日に発行された公約ですが、現在の時点では193カ国が加入していると言う事で、条約が施行された後173カ国が加入した事が分かる（アメリカとソマリアの2カ国は未加入）。

#### -発布主体

法律を発布する主体は国、具体的には国の機関や権限がある者である<sup>33</sup>。法律は法定の手順、手続き、権限に従って発布され、法律は国家権力を持ち、国家の強制力で実施を保障される。

公共政策は原則には国が発布する政策で、国のリソース（主に）や社会のリソース（社会化）を用いて国が政策実施を行う。一方、ベトナムは異なり、多数の公共政策はベトナム共産党の文献、議決によって発布される。例えば、第11回全国代表大会の政治報告では以下のような主張がなされた。「ベトナムの社会主義政党的観点に従って、宗門、宗教に関する政策、法律の改善を続ける。各宗教の美しい道徳、文化価値を発揮し、宗教組織、宗教要人、教徒の方々が良き宗教、良き教徒として、祖国の建設、護衛に積極的に貢献し、参加する事を促す。また、国が公認した宗教組織のルールに従って、宗教組織の活動に関心を持ち、便宜を図る。それと同時に、宗教、信仰を利用し、民族団結を破壊、切り崩し、唆す行為とは断固として対決し、率先して防止する」<sup>34</sup>。

#### - 発布過程

<sup>33</sup> 法規範文書発布については法律により確定。

<sup>34</sup> ベトナム共産党：第11回全国代表大会の政治文献、国家政治・事実出版社、ハノイ、2011年、245ページ

法律文書や政策文書によって、発布手順は異なる。法律の発布には、法案の提案から検査、検定、討論、決定まで、多くの機関が関わる。この手順は法律文書に従う（法規範文書発布に関する法律）。法律文書は合法、合憲を満たしており、厳守すべきものである。もし違憲、違法とする内容、行為が含まれている場合、その法律文書は保留、変更、もしくは廃止する必要がある。

ところで、公共政策は主に行政機関が自らの立法権、行政権能に基づいて立案、検定や発布を行う。その他の個人、組織には参加、提案する役割がある。政策の種類は単純に法律文書だけではなく、国のプログラム、計画や主張活動もある。現在、ベトナムには行政決定、公共政策の発布、作成手順に関して、別に規定する法律文書はまだ存在しない。

次の大野健一教授（経済産業研究所）の発言を通じて<sup>35</sup>、公共政策と法律の発布手順の違いをよく理解する事ができる：ほとんどの政策は企業の参加が制限され、問題が発生するか、又は発生した場合のみ、企業は意見を述べる事ができる。その上、各政策は各省の協力がなく、具体的な行動に欠けた列記のみである。それぞれの官庁には多くの計画がありますが、色々分野がある中、どんな分野を優先すべきかを決定する事ができない。ベトナムは戦略セクターが多く存在するが、1つの戦略に対して数人しか担当せず、短期間で行うので、達成率は高くない。政府が優先順位を決め、政策を決定。どんな政策にも、機関が分散し過ぎ、重複している部分が多いのが現状である。例えば、車に関わる環境問題を処理する際は、工業省、交通・運送省、資源・環境省、科学・技術省の代表者、交通公安等の機関に相談する必要がある、その問題に特化した機関はない。他の政策も同様に、国交省レベルの機関が多く関わってくるが、方向性を決定する機関はない。ベトナム政府は現在多くの問題を抱えており、公務員は人力も財力も制限された環境の中で、計画、戦略を必要としている。

その結果、立法の段階で、公共政策と法律の概念の従属関係、相互依存関係を認識し、正しく利用する必要がある。つまり、法律は「二役を担う」と考え、政策の具現及び政策そのものであると考えられる。

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<sup>35</sup> 経済産業研究所の大野健一教授が、ベトナム発展フォーラムでベトナム戦略セクター・政策作成手順について意見を述べた。（フォン・リエン記者、vietnamnet 電子新聞より引用）

政策及び法律の作成手順や実施手順が一致している場合のデメリット：法律の立案が長引く。人々の生活に対して、多くの法律に発布すべき又は変更すべき要求があり、早急な対応を求められているが、それには時間がかかる。法律システムは矛盾やオーバーラップが多く、このような部分は解消されていない。特に政策に関する研究がまだ不足しているため、発布される法律は生活に活かせていない、もしくは生活に合致していない。つまり、まだ実際の生活には対応できていない。

我々は常にどうして法律は生活に取り入れられないのか？ という問題に対し、関心を持っている（現法律は実施するということに重きを置き考慮、評価している）。ただし、それは結果論であり、問題の要因は生活の中に法律を取り入れていないことであり、そして、そのことで政策を決定、作成する際の盲点となっている。

-法律の内容範囲や調整目的及び政策目的

法律の内容範囲や調整目的は政策とは異なる。法律は**普及性のある基本的な社会関係**を調整し、それから法定の方式により社会管理を目標として、法理に基づいて、体制を設立し、社会全体や社会構成部分の順序発展を保障する。

法規範文書発布に関わる法律（2015年）には法律の影響範囲は以下の通りに規定されている<sup>36</sup>：

a)国会、大統領、政府、人民裁判所、人民検察庁、国家選挙委員会、国家会計監査、地方行政、国合が設立した特定な行政—経済局や他の機関等の組織や活動。

b)人権、国民の権利や基本義務の法律を憲法に規定すべき、人権、国民権の制限、罪人や刑罰。

c)金融、国家貨幣、国家予算、税類の規定、変更、廃止の基準政策。

d)文化、教育、科学、技術、環境の基準政策。

d)国防、国家公安。

e)国の民族政策、宗教政策。

g)人民軍の格付け、外交格付け、その他の国家格付け、国民榮譽賞等。

<sup>36</sup> 2015年法規範文書発布に関する法律第15条

h) 対外に関する基準政策。

i) 民意を求める。

k) 憲法を保障する仕組み。

l) 国会の権限に付随する他の問題。

法令の調整範囲内の問題<sup>37</sup>：

a) 憲法、法律、法令の説明。

b) 経済・社会の発展に関する緊急を要するものに対応するために法定、国会常任委員会の議決を全部もしくは一部分の適用期間を休止、又は延長する事が出来る。

c) 法令、国会常任委員会の議決の廃止；廃止する場合は、国会常任委員会は直近の会議で国会に報告する責任がある。

d) 総動員又は部分的動員；国全体もしくは各地方の緊急事態宣言を廃止するか、発令するかを決定する。

d) 人民代表会議の活動ガイダンス。

e) 国会常任委員会の権限に付随する他の問題。

公共政策は、政策分野によって内容や具体目標が異なる。一般的には、公共政策は国の管理手法の1つで、特定な対象に影響を与える事を目標に制定される。

公共政策は主に2つの目標がある：(i) 公共経済におけるサービス、製品生産を促進し、民間部門と国営部門両方を支援する；(ii) 経済全体、政治、環境において、長期的にも短期的にも、効果的に効率良く公共リソースを管理する。例：金融政策を引き締めるか拡張するか、輸出政策、国政企業の民営化政策、革命に貢献する人への優待政策、貧困者、高原の住民、少数民族に対する政策、雇用政策、新農村プログラムに対する金融政策等。

現在の公共行政にも、いくつかの政策を見て取る事ができる：一国家組織、行政組織に関する政策。例：1つの組織団体や多数分野の総合部門は、省、県、府、区人民委員会を組織しない事。

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<sup>37</sup> 2015年法規範文書発布に関する法律第15条

-政府に関係する人（主には幹部、官吏、公務員）の使用、管理に関する政策。

例：中央執行委員会 10 期の第 9 回会議において、今から 2020 年までに幹部戦略を実施し続けると結論。

-幹部、官吏、公務員への待遇制度、給料等の関連政策。例：2013年5月27日のベトナム共産党中央委員会の第7回会議における第63号中央決議では「給料、社会保険に関する政策改革、譲許的援助の功績者への優遇、2020年までの改革方向の決定等」を定めた。

つまり公共政策は、政策を練る能力、目標設定能力、検査、評価根拠を測る基本的ツールの1つで、国家予算、公資産、国家資源等、公共リソースを使用する責任について定める。

#### -実施を保障する仕組み

公共政策と法律の実施を保護する条件は似ているところはいくつかあるが、基本的な違いは、法律は実現するために国力で強制的に行う。例えば、処理や行政上違反の処罰、そして、刑事違反には刑罰を適用し、法律に反しないようにする。

それに対して、政策は法律よりも柔軟性があり、政策対象者の社会生活、経済生活における自身の能力を高める事を目的とし、社会の各階層の不平等を抑え、市場の失敗を更正し、整理、再建、支援するための活動プログラムの形で発布される。

実施を保障する仕組みの中では、法律は公共政策を実現するための担保でもある。公共政策の目標は、法律実施過程を通さずには達成できない。（生活に政策を取り入れる）。なぜなら、公共政策は政府により組織された活動の中で実施され、政策に言明された目標を達成することを目的としているからである。実施過程において、政策の目標と目的を実現させるために、権限がある国家行政機関が各規定、案、計画を制定し、それらの規定、案、計画を実現するために活動を行うべきである。もし公共政策が法律規定として制度化されないのであれば、公共政策は「机上の空論」となり、生活に効果を発揮されることはない。

## 第3章

### 立法過程と法令評価

#### 3.1. 立法過程

国家権力構造の視点から見ると、立法とは、立法権、行法権及び司法権の相関における1つの権力である。

国家機構・構造の視点から見ると、立法とは、民主国家における国民の願望と利益を代表する機関である議会に結びついた機能である。議会は法づくりを担う機関である。政府、裁判所などの他の機関にこの特権はなく、加えて議会は法律の草案を提案し、起草を組織する権利を有する。このように、国家の活動組織の視点から見ると、立法とは、国家が法令を定め、社会の各主体に適用を課す一般規範を設ける活動分野である。

立法に関する共通認識を基礎として、立法過程は以下のように理解される。立法過程は法づくりの過程において、緊密で、厳格な秩序に則って進行し、憲法と法律により調整され、法令発議から、文書起草、法律の草案提出、審査、討論、採択を含む各段階の手順である。

2015年法規範文書発行法によると、我が国の立法過程は以下の6段階を経る：

- 1) 法律、国会常務委員会令の制定計画の作成
- 2) 法律、国会常務委員会令の起草
- 3) 法律、国会常務委員会令の草案の審査
- 4) 法律、国会常務委員会令の草案に関する国会常務委員会の審理、付意見
- 5) 法律、国会常務委員会令の草案に関する討論、検討、改訂及び採択
- 6) 法律、国会常務委員会令の公布

上記6段階は互いに緊密な関係を有する。

### 3.1.1. 立法発議

#### 3.1.1.1. 立法発議に関する観念

仏越行政・法律辞書（世界出版社、1992年）によると、立法発議（*initiative de loi*）は、「法律の草案（*projet de loi*）や法律に関する建議（*proposition de loi*）を国会、議会に提示することができる、一部の機関、団体及び官職などの権利」と理解される。

本書によると、法律の草案の提出権及び法律の建議提出権は以下のように理解される<sup>38</sup>。

— 法律の草案（*projet de loi*）の提出権は、法律の定めに沿って国会、議会で審理し、法律として採択するために文書を提示する機関、団体及び官職などの権利である。国会に提示する法律の草案は以下を含むこと。

<sup>38</sup> ゴ・チュン・タイン (Ngo Trung Thanh)、国会事務局、立法発議における諸問題、立法研究ジャーナル、第9/2002号



＋発行の理由、必要性、法律の目的、主な内容、及び法律が採択された際の施行方法の想定に関する提出機関による説明文書。

＋法案文書及び施行ガイダンスの文書に関する原案。

＋法案の法体系における合憲性、合法性及び統一性に関して国会で審理するための権限を有する機関（通常は国会・議会の各委員会）による事前審理、検査の報告書。

－法律に関する建議提出権 (*proposition de loi*) は、機関、団体、国会議員及び市民が法律、法典文書の起草案の審理を国会、議会に提議する権利である。法律に関する建議提出権は、専ら国会に法案の起草を決定するための審理を提議するものであり、その法律の草案の起草及び国会への提出は含まない。

このように、立法発議権は、法律の草案の提出権及び法律に関する建議提出権の2つの権利を含む。ほとんどの国は、立法発議権に関して規定する際、この分類で統一している。

しかしながら、立法発議権を有する主体に関する規定は様々である。例えば、フランスでは、1958年憲法第39条の規定によると、法律の草案の提出権は政府及び議員に属する。アメリカでは、権力分立制を徹底して適用しており、立法発議権は、国会議員の「特権」と見なされており、このように規定するのは、立法権が真に国会に属することを確保するためである。日本でも、立法発議権は議員に付与されているが、法律の草案を国会に提示するには、少なくとも20人の衆議院議員か、又は少なくとも10人の参議院議員の賛成がなければならない。イギリスでは、政府及び議員共に議会への法律の草案の提出権を有する。

その他に、他の一部の国では、立法発議権は国民に付与され、国民イニシアティブ (*initiative populaire*) と呼ばれている。これは、国民の意見に沿った法律の草案や法律の建議を国会、議会へ提示し、強制的に国会、議会に審理させることができる、半直接民主制 (*démocratie semi-directe*) における民主的な方法である。例えばイタリアでは、憲法の規定により、少なくとも50,000人の有権者の署名があれば、法律を国会に提示できる。ここで、我々は法令で認められた主体の権利としての立法発議と、他の主体の提議による立法発議とを区別しなければならない。原則としては、あらゆる機関、組織、個人は、法案の制定を提議することができることに留意しなければならない。これらの提議はマスメディアに掲載するか、国家機関、国会議員などに送付することができる。しかし、立法発議権が法令により付与されていない主体による立

法発議は、国会に提示できず、強制的に国会に審理させることもできない。逆に、立法発議権を有する主体の立法発議であれば、国会に提示でき、強制的に国会に審理させることができる。しかしながら実際には、法案起草の決定は、法令により立法発議権が付与されていない主体の発案から始めることもでき、この立法の発案は何らかの情報チャンネルを通して、立法発議権を有する主体に届けられ、その主体が合理的と見なせば、審理のために国会に提示される。これは立法発議の発信源の1つと見なされる。

上記の分析から、立法発議権の基本的な特徴を以下に2つ挙げることができる：

－立法発議権は、ある一定の主体だけが法的な手順、手続きに従い行使することが法令で認められている権能である。

－立法発議権は、強制力を有する（強制的に国会、議会にその立法発議の承認又は否認を審理、決定させることを通して体现される）。

立法発議に関する規定。2015年法規範文書発行法は以下の通り規定する：

－「1. 国会に法律の草案を提出し、国会常務委員会に国会常務委員会令の草案を提出することができる国家主席、国会常務委員会、国会の民族評議会、委員会、政府、最高人民裁判所、最高人民検察院、国家会計検査院、ベトナム祖国戦線中央委員会及び戦線の構成組織の中央機関は、法律、国会常務委員会令の制定を提議することができる。」（第32条1項）

－「1. 国会議員は、法律、国会常務委員会令に関する建議をすることができる。法律、国会常務委員会令に関する建議は、党の路線、方針、国家の政策；経済社会の発展、国防、安寧、人権、市民の基本的な権利及び義務の実現の保障の要求、ベトナム社会主義共和国が加盟する関係国際条約における責務に従うものでなければならない。

2. 国会議員は、法律、国会常務委員会令の制定の提議をすることができる。

法律、国会常務委員会令の制定の提議は、この法律第32条2項の規定に基づき作成される。」（第33条）

2015年法規範文書発行法により、立法発議が以下の2つの形式下で実施されることが特定されたと理解する。i) 機関、組織及び国会議員の法律、国会常務委員会令の制定の提議及び建議。しかしながら、権限を有する機関、組織は法律、国会常務委員会令の制定を提議する任務に集中し、国会議員は法律、国会常務委員会令の制定を建議する任務に集中するという方向性で調整される。

2015年法規範文書発行法による立法発議に関する規定は、次のような特徴を有する：

第一に、立法発議権を有する主体を明確化する。

第二に、各主体の立法発議権の行使形式が法律の草案の提出又は法律に関する建議であることを特定する。

第三に、異なる主体に対する立法発議権の行使形式を明確化する。

自らの立法発議権の行使にあたり、各主体は2015年法規範文書発行法に規定された手順、手続きを遵守しなければならない。

### 3.1.1.2. 立法発議の根拠

#### a. 法定根拠

—法律、国会常務委員会令の制定の提議は、次の根拠に基づかなければならない<sup>39</sup>：

i) 党の路線、方針、国家政策

ii) 法令の施行の総括結果、又は法律、国会常務委員会令の草案に関する社会関係の実情評価

iii) 国家管理、経済社会の発展；人権、市民の基本的権利及び義務の実現の保障；国防、安寧の保障の要求

iv) ベトナム社会主義共和国が加盟する関係国際条約における責務

—国会議員による法律、国会常務委員会令に関する建議は、次の根拠に基づかなければならない<sup>40</sup>：

i) 党の路線、方針、国家政策

ii) 経済社会の発展、国防、安寧、人権、市民の基本的な権利及び義務の実現の保

障の要求

iii) ベトナム社会主義共和国が加盟する関係国際条約における責務

b. 意識面では、立法発議は以下の根拠に基づかなければならない：

—経済、政治、社会生活の要件

—有権者、公衆の需要

—法律の空白、現行の法律の不備

<sup>39</sup> 2015年法規範文書発行法第32条2項

<sup>40</sup> 2015年法規範文書発行法第33条1項

－公共政策の変化

－国際的背景 など

### 3.1.1.3. 立法発議の過程

ベトナムの現在の立法過程において、立法発議権の行使は、法律、国会常務委員会令の制定計画と密接に関係する。

立法発議の実施の為、先ず、その発議を法律、国会常務委員会令の制定計画（任期ごとの計画及び年次計画）に組み込まなければならない。立法発議を法律、国会常務委員会令の制定計画に組み込むにあたり、以下のステップを経なければならない：

－ステップ 1：法律、国会常務委員会令の制定の提議書類を国会常務委員会に送付する。

立法発議権を有する主体は、法律、国会常務委員会令の制定の提議書類を国会常務委員会に送付する。これに先立ち、この主体は以下の事項を実施しなければならない<sup>41</sup>：法律、国会常務委員会令の制定の提議に関連する法令施行状況の総括。法律、国会常務委員会令の制定の提議に関連する社会関係の実情の調査、評価。法律、国会常務委員会令の制定の提議における政策内容の策定。政策の影響評価。法律、国会常務委員会令の制定の提議に関連する機関、組織、個人の意見聴取を組織する。表明された意見の取り纏め、研究、解説、検討を行う。提議の査定、提議書類の完成。

－ステップ 2：国会の法令委員会は、法律、国会常務委員会令の制定の提議、法律、国会常務委員会令に関する建議を審査する。

法令委員会は、参集し、機関、組織、国会議員の法律、国会常務委員会令の制定計画に関する提議及び国会議員の法律、国会常務委員会令に関する建議の審査を主管する。

－ステップ 3：国会常務委員会は、政府の原案、その他の各機関、組織の法律、国会常務委員会令の制定の提議、国会議員の法律、国会常務委員会令に関する建議、審査機関の意見を基礎として国会で決定するために提出する法律、国会常務委員会令の制定計画案を作成する。

－ステップ 4：国会は、国会の本会議において法律、国会常務委員会令の制定計画の採択を表決する。

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<sup>41</sup> 政府の提出でない法律、国会常務委員会令の制定の提議については、法律、国会常務委員会令の制定を提議する機関、組織、国会議員は、政府の意見聴取及び政府の意見を研究、検討する責任を有する。

しかしながら、実際のところ、一部の場合、立法発議は完全にこの手順通りには実施されない。例えば、第5期国会、第10会期における、2002年法律、国会常務委員会令の制定計画に関する議決の採択の際、本会議の会場で、グエン・シン・フン国会議員は土地使用税法の草案の起草の建議を公表。国会が審理し、本法案を計画に補充することを決定した。

このように、立法発議は2種類に分けられ、1つは会期前に国会常務委員会に送付され、国会常務委員会により法律、国会常務委員会令の制定計画案に組み込まれる法令制定の建議、提議を通して実施される（この場合、建議、提議は文書に起こされ、通常、比較的十分な解説を伴う）。もう1つは、国会議員自身が、国会本会議の会場で直接建議を公表することを通して実施される（この場合、建議は文書でなく、口頭発表によりなされる）。

実践の上では、立法発議権に関する規定の実施は、国会立法の効果に多大に貢献してきたが、経済社会の発展目標の充足に寄与する国会の立法活動の要求に対して、これらの規定は、これまでに理論面及び実践面で解決されるべき障害、課題を露呈した。具体的には以下の通り：

－法律、国会常務委員会令に関する建議と、法律、国会常務委員会令の制定の提議の間に明確な区別がないため、国会議員が立法発議を国会常務委員会に送付する際、法律、国会常務委員会令に関する建議の形で送付すべきか、法律、国会常務委員会令の制定の提議の形で送付すべきか分からないといったケースが多く発生する。

－現行のように法律、国会常務委員会令の制定計画を決定することで、法律、国会常務委員会令の制定の提議の中から、優先的で施行可能性のある立法リストを設定できるという利点はあるが、憲法で認められている各主体の立法発議権が一部限定的になる。法律、国会常務委員会令の制定計画がいったん採択されると、立法発議権を有する主体は、非常に必要があるにもかかわらず、計画外のその他の立法発議を提案する機会を得ることが難しい。その他に、ある草案が法律、国会常務委員会令の制定計画に組み込まれると、草案の提出を割り当てられた機関以外の、その他の主体が同様の草案を提出する権利を有するかどうかは明確でなく、もしあるとすれば、多数の主体が、同一の草案を提出した場合どのように解決するのか。

－立法発議権を有する主体の法律、国会常務委員会令の制定の提議、国会議員の法律、国会常務委員会令に関する建議を、国会常務委員会が国会で審理、決定する

ために提示する法律、国会常務委員会令の制定計画案に組み込まなかった場合、その主体の立法発議権の行使が保証されない。

### 3.1.2. 立法計画作成（優先事項の確立）

#### 3.1.2.1. 立法計画に対する作成基盤及び要求：

立法計画作成段階の2つの重点的な内容は、法律、国会常務委員会令の制定の議事計画を作成するための立法発議の提出及び優先事項の確立である。

法律、国会常務委員会令の制定計画は、党の路線、方針、国家政策、経済社会の発展、国防、安寧の戦略及び時期に応じた国家管理の要求、人権、市民の基本的な権利及び義務の保障を基礎として、毎年作成される<sup>42</sup>。

立法発議権を有する主体は、法規範文書発行法に規定された根拠に基づき、自らの立法に関する提議、建議を提出しなければならない。

#### 法規範文書の制定計画に対する要求：

－法規範文書の制定計画は党の方針、路線、国家政策を体制化しなければならない。

－法規範文書の制定計画は法体系全体における統一性、整合性を確保しなければならない。

－法規範文書の制定計画は法体系における序列を確保しなければならない。

－法規範文書の制定計画は法律制定の全体戦略に適合しなければならない。

－法規範文書の制定計画は施行可能性を確保しなければならない。

#### 3.1.2.2. 優先事項の選択根拠：

提案された草案の優先順位の審理及び決定は、それを特定する根拠に基づかなければならない。

－考慮すべき重要な第一の指標は、貧困緩和問題、雇用の創出、失業削減問題など、*社会共通の利益*に関連する問題である。通常、良好な国家運営を促進し、社会福祉を向上させる各文書は、第一義的に優先される。

－国の*経済基盤*の力強い促進を目的とする法律、国会常務委員会令も優先されるべきである。優先順位を確定する際、農産業の発展に考慮し、国家財政制度に対する安定性、安全性を強化し、海外投資家に便宜を図るための*持続可能な解決策*を打ち

<sup>42</sup> 2015年法規範文書発行法第31条1項

出す法律文書に留意すべきである。この他に、*市場の枠組みの改善*に資する、つまり商業的秩序を決定付ける法律文書も優先される。

一他にも、国家予算法、労働法、高齢者・障害者手当の問題、環境保護法などの*インフラ構築*において非常に重要な位置を占める非商業的な法律にも留意しなければならない。

原則として、権利を有する主体は、立法計画を作成するための立法発議を提出することができる。しかし、問題となるのは、法律、国会常務委員会令の制定の提議及び法律、国会常務委員会令に関する建議が拒否されうるのかどうかである。

2008年法規範文書発行法の我が国における過去の実践を通して次のことが示された。本法は、法律、国会常務委員会令の制定の提議及び法律、国会常務委員会令に関する建議を国会常務委員会に送付する権利を有する各主体を規定している。国会常務委員会はその提議、建議を審理し、国会で審理、決定するために法律、国会常務委員会令の制定計画の原案を作成し、提出する。このように、審理の過程では、国会常務委員会が主管機関と規定され、理論的に国会常務委員会は、法律、国会常務委員会令の制定の提議、法律、国会常務委員会令に関する建議を法律、国会常務委員会令の制定計画の原案に組み込むことを承認又は否認することができる。法律、国会常務委員会令の制定の提議、法律、国会常務委員会令に関する建議が、国会常務委員会により国会に提出される法律、国会常務委員会令の制定計画の原案に名前が載った場合でさえ、その提議、建議は国会で意見が付され、国会常務委員会が指導を主管し、各機関が検討した後、退けられることもありうる。国会常務委員会はある提議、建議を法律、国会常務委員会令の制定計画の原案に組み込まないことを決定する場合にも、本法はその根拠となる指標に関して規定していない。ある提議、建議が、国会常務委員会により国会に提出される法律、国会常務委員会令の制定計画に組み込まれなかった場合、その提議、建議の主体が、国会に対し自らの提議、建議を擁護する機会を持つことを許可する規定がない。このように、国会に法律の草案を提出する権利、法律に関する建議の権利に関する憲法の規定から、法律、国会常務委員会令の制定計画に関する規定を通じて、国会常務委員会に提議、建議を送付する権利は制限され、国会常務委員会が法律、国会常務委員会令の制定計画に組み込まない可能性により更に制限を受ける。

法律の起草手続き及び法律の草案の提出、法律に関する建議の手続きと、法律、国会常務委員会令の制定計画との繋がりによる不備。

上記の分析のように、2008年法規範文書発行法の規定によると、法律、国会常務委員会令の制定計画は、国会、国会の各機関及び法律、国会常務委員会令の草案の提出を割り当てられた主体の立法活動の中心である。従って、法律、国会常務委員会令の制定計画に組み込むための、権利を有する主体側からの提案は非常に重要である。しかしながら、実際にはここ何年か、法律、国会常務委員会令の制定計画の補充、変更は頻繁に行われ、年に2、3回にも及ぶ。準備が間に合わず、計画からの削除を求める草案や、必要かつ緊急の状況で計画に補充提議される草案もある。法律、国会常務委員会令の制定計画に関する規定が現在のまま維持されれば、法律、国会常務委員会令の制定計画への補充や法律、国会常務委員会令の制定計画からの削除は当たり前のこととなる。これは提案する主体側の責任を伴う行為であると理解するべきである。なぜなら、ある法律の草案の準備が十分に整っていないにも関わらず、国会の各機関や国会に提示され、順番で採択されることも起こりうるが、それらの草案は質的に不十分で、社会の要求及び国家機関の管理要件を満たしていない。その一方で、法律、国会常務委員会令の制定計画に名前が載っていないけれども、主体自身が必要かつ緊急であると認める草案があれば、法律、国会常務委員会令の制定計画に補充されない理由はない。このような現実や前述した課題から、本法は法律、国会常務委員会令の任期ごと及び年次の制定計画について継続的に規定するべきではなからうか。

こうして、原則としては、権利を有する主体は立法発議を提出することができる。しかしながら、立法内容は党指導部の政治綱領に沿って重要かつ必要性の高い政策課題の領域に特定される。ここから、立法の権限を有する機関は、法規範文書の制定計画を討論、採択する。

2015年法規範文書発行法第51条には、法律、国会常務委員会令の制定計画の調整に関して以下のように定められる。

国会常務委員会は、次の各場合において、自ら又は法律、国会常務委員会令の草案を提出する機関、組織、国会議員の提議に基づき、法律、国会常務委員会令の制定計画の調整を決定する。

一 経済社会状況の変化により発行する必要がなくなった法律、国会常務委員会令の各草案を計画から取り除く、又は必要な場合において提出時期を調整する。

一 経済社会の発展、国防、安寧、人民の生命、財産を保障する緊急の要求に応じるための法律、国会常務委員会令の各草案；法体系の統一性を保障するため又はベ



トナム社会主義共和国が加盟する国際条約を実施するために新たに発行された各文書に基づき修正する必要がある法律、国会常務委員会令の各草案を計画に補充する。

計画への補充は、この法律第 32 条から第 42 条まで、第 44 条、第 45 条、第 47 条及び第 48 条 1 項の規定に基づき実施される。国会常務委員会は、国会に対し、直近の会期において、法律、国会常務委員会令の制定計画の調整について報告する責任を有する。

優先的な指標の特定は必要であるが、強硬な指標体系が必要であるのと同義ではないことが分かる。各国のそれぞれの異なる条件、時期によって、文書発行の優先指標の設定も異なる。しかしながら、最も一般的な側面で、適切な立法計画や立法計画に組み込むための立法発案の選択は、以下の問いに対する回答を基礎としなければならない。

- i) なぜこの法律が必要なのか？
- ii) この法律の目標は何か？
- iii) この法律の対象、調整範囲は？
- iv) この法律が発行された場合、解決される課題は何か？社会の持続的な発展、人権、市民権にどのような作用があるか？
- v) 関係者の利益は？
- vi) (採択された場合) 法案実施における国家、社会、市民の実質的な能力、可能性。
- vii) 法案の施行可能性、効果、法律の実施にかかる費用は？

### 3.1.3. 法律の起草と発行

#### -a. 法律作成と発行の原則

2015 年法規範文書発行法第 5 条によると、法規範文書の作成、発行原則は、以下の通り：

- 1) 法規範文書の法体系における合憲性、合法性及び統一性を保証する。
- 2) 法規範文書の制定、発行の権限、形式、手順、手続きを遵守する。
- 3) 法規範文書の各規定の明確性を保証する。
- 4) 法規範文書の施行可能性、経済性、効果性、適時性、入手容易性、実現容易性を保証する；法規範文書における性平等問題への配慮を保証する；行政手続改革の要求を保証する。

5) 国防、安寧、環境保全に関する要求を保証する。ベトナム社会主義共和国が加盟する各国際条約の実施を妨げない。

6) 法規範文書の制定、発行の過程における個人、機関、組織の意見、建議の受付、反映の公開性、民主性を保証する。

-b. 調整対象及び調整方法の選択

法律は社会関係を形成しないが、社会関係を調整する。調整するために、法律は調整対象及び方法を特定しなければならない。調整対象及び方法は、互いに密接な関係を有する法令調整の基本的な2つの事項であり、法分野ごと、特定の法律ごとの特性を有する。

国家機構の組織及び活動に関する社会関係の調整法における代表的な調整方法は、実施に強制力を有する命令、服従であり、民事的な性質を有する関係の調整法は、各当事者間の平等・自由協議の方法が代表的な調整方法である。これは、法令の調整において、原則的な必須事項であり、法令の制定にこれらを運用しない、又は不適切な運用をすれば、法令の調整は効果がないか、効果が薄くなるだけでなく、社会関係の発展を抑制し、不安定さも引き起こす。実践によって証明されているように、我々の国家が集中型、官僚的、配給志向で経済を管理し、行政命令によって市場、生産、販売、商品流通に介入し、市場関係を限定的にし、経営的自由権が刺激されなかった時代に、我が国は経済社会恐慌に陥り、1986年の第6回全国党大会から経済的、政治的刷新事業を実施せざるを得なかった。

調整対象及び方法の選択の問題は、立法の発案が法律の制定の提議書類に文書化される時から登場する。政府が提出する提議に関して、法律の制定の提議書類は司法省に内容を査定されるが、その中には法律、国会常務委員会令の発行の必要性、調整対象、範囲に関する内容が含まれる<sup>43</sup>。

-c. 法律の起草・発行過程

法律の起草、発行は、より詳細な段階ごとに実施される。概要は以下の通り。

- －起草委員会の設立及び法律、国会常務委員会令の起草主管機関の割り当て；
- 法律、国会常務委員会令の起草
  - －法律、国会常務委員会令の草案についての意見聴取
  - －法律、国会常務委員会令の草案の査定

<sup>43</sup> 2015年法規範文書発行法第39条3項a号

- －法律、国会常務委員会令の草案の完成
- －法律、国会常務委員会令の草案の審査
- －法律の草案に関する国会常務委員会の審理、付意見
- －法律の草案の検討、改訂
- －（1回又は2回の）国会会期における法律の草案の審理、採択
- －法律、国会常務委員会令の公布

法律の草案の起草、査定、審査、完成及び採択の表決の過程において一貫した基本事項となるのは、法律の制定における政策評価である。なぜなら、国家がある法律を制定する際には、新しい政策の実施に対する法的根拠の形成を求めるためか、又は現行の政策をより効果的に実施するため、又はその両方の理由によるものであるからである。政策が十分に又は適切に法律化されなければ、政策の実施は効果が薄い。従って、現行の法令では、各主体が立法の提議の前に、自らの法律の制定の提議における政策の影響評価の報告をしなければならないというより厳しい要求を設定した。

2015年法規範文書発行法第35条によると、機関、組織は、法律、国会常務委員会令の制定の提議における政策ごとの影響評価を行う責任を有する。国会議員は、自ら又は権限を有する機関に要求し、法律、国会常務委員会令の制定の提議における政策ごとの影響評価を行う。

法律、国会常務委員会令の草案の起草、査定、審査、審理、付意見の過程において、新たな政策が提案されたときは、当該政策を提案した機関は、政策の影響を評価する責任を有する。

法律、国会常務委員会令の制定の提議における政策ごとの影響評価の内容は、次の事項を明らかにしなければならない：解決を要する事項；政策の目標；政策を実現するための解決策；政策の積極的、消極的影響；各解決策の費用、利益；各解決策の費用、利益の比較；機関、組織の解決策の選定及び選定の理由；行政手続、ジェンダーへの影響の評価（もしあれば）。

機関、組織、国会議員は、法律、国会常務委員会令の制定の提議における政策ごとの影響評価を行うときは、影響評価報告書の草案を研究、起草し；報告書の草案に対し表明された意見を聴取、区分けし；報告書の草案を検討、改訂する責任を有する。

*立法過程における法律と公共政策間の「ねじれ」現象：*

実際のところ、過去の法律の制定は、以下の問題を露呈している。法律が国会に提出されたが、国会は中止又は法律の制定計画よりも遅らせることを決定した。法律が政府に提出されたが（又は、他の機関により、政府の意見を求めるために提出されたが）、政府は中止又は法律の制定計画よりも遅らせることを決定した。法律が国会で採択されたが、以下のような問題を呈する。

－政策の内容は、法律に方向付けされておらず、政府、政府首相が具体的な決定をするよう委任されている。実際には、政府、政府首相が発行する多くの文書は、法律、国会常務委員会令の効力発生よりも遅く、これにより法律はガイダンス文書が発行されるのを待って、初めて実施可能となる。

－発行された法律に規定された政策が、政府が法律の草案で示した政策内容と異なる内容を有する。

－政策に整合性がなく、法律の適用に困難が生じる。

#### *政策の計画及び策定過程、及び法律の制定過程の2つの過程の同一性の結果*

2015年法規範文書発行法の発行前に、我が国では1996年法規範文書発行法が運用され、2002年、2008年に修正、補充された。基本的には、立法過程はこれらの法律を経て大きく変わることはない。しかしながら、立法計画の作成と法律の起草の2つの段階の作業内容に関して、2015年法では旧法からの変更がなされた。

旧法によると、*法律の制定計画の作成段階*に関して、法律の制定計画の作成根拠として、非常に基本的な根拠が規定されたが、かなり一般的で、具体性に欠け、法律、国会常務委員会令の国会任期の制定計画の作成には適しているが、法律、国会常務委員会令の年次制定計画の作成は、ある具体的な法律の制定及び採択を明確化しなければならない為、この計画作成の十分な基礎となり得なかった。

*法律の起草段階*に関して、法律の草案が国会により法律の制定計画に組み込まれることが決定した後、起草委員会は法令の実情、実践的な法律施行の評価の総括活動を実施しながら、実施の調査、経験の参照、情報の収集及び評価、政策面の調整範囲、調整内容の方向付け、法律条項（法規範）及び法律の草案となる調整内容の策定（設計）をしなければならない。当然、法律作成者は、これらの作業、課題の研究、実施を欠かすことはできないが、それをどのレベルで実施するのかということや、その全活動のある1つの過程、あるいはある1つの段階で一括して取り組まないようにすることも重要である。

上記の法的根拠から、政策の策定段階である法律の制定計画の作成並びに法律の起草における実践がほとんど軽視されることに繋がる。更に言えば、法律の年次制定計画の作成は、科学的根拠に正しく基づいておらず、実情にきちんと即していない。法律の制定の提議を提出する機関、組織は、法律の実情、実践的な施行の十分な研究、評価、総括の必要性を重視しておらず、また、法案の調整範囲及び内容をイメージしきれていない（特にこの側面は脆弱である）。つまり、政策の提案—法律の草案を形作るための物質的基礎が形成されていない。法律の制定の提議は多くの場合、感覚的なものでしかなく、たった数枚の紙に説明がされているだけのものまでである。法律の起草段階で、起草委員会は、過重な任務を負い、前述のように多数の作業を同時に実施しなければならないため、1つの法律の草案を起草するのに多大な時間と労力がかかるが、更に重要なのは、法律の草案の研究及び起草における論理的、科学的及び系統的な手順が不足していることである。

要するに、立法過程の法的根拠並びに実践を上記のいくつかの側面から見ると、我々は政策の策定と法律の制定の2つの過程（2つの段階とも言うことができる）を一括し、同一視しているということが分かる。こうした実情は、現行の法規範文書発行人法の規定に沿った立法過程のその他の討議すべき多くの問題、課題と相まって、以下のような結果をもたらした。法律の起草が長引き、実践要求を満たすために必要な法律の発行、修正要求が一層増していく中で、その進捗の加速や数への要求を満たすことができない。枠組み法の状態がかなり常態化している。法体系の矛盾、重複が未だに多い。局所的な利益状態が取り除かれていない。特に、法律が発行されたが、政策の策定の研究が脆弱なため、生活に浸透してない、又は生活に適合していない。つまり**生活を法律に組み込めていない**。通常、なぜ法律は生活に浸透しないのかという問題だけに関心が持たれ、注視される（つまり、多くは法律実施の視点からのみ審理、評価される）。我々から見れば、それはただの結果であり、問題の根源はまさに、我々が**生活を法律に組み込めなかった**ことにあり、その誤りの原因は、主に政策の研究及び計画の脆弱さに起因する。

これにより、2015年法規範文書発行人法は、立法過程の視点から見て、政策の策定段階と法律の起草段階を切り離した（当然、法律の起草段階は、政策の提案及び完成を引き継ぐ段階なので、相対的な意味で理解される）。更に具体的に言えば、政策面に関する研究が十分になされ、機が熟してから法律を制定するということになる。

「政策を法律に変換する」活動の要求：

－法律形式で発行される法政策の経済社会的影響の評価予測に関する規定を完成すること。

－法律に組み込まれることが想定される政策内容を明確化すること。

－政策の策定は安定性を確保すること。

－政策の策定は明確性を有し、共通の権利及び社会の発展に適合し、共通の発展を促進し、ある省・部門又は少数の人間の局部的な権利のためではないこと。これを基礎とすることで、政策体制・法令は、調整される対象に平等な法的環境を初めて形成することができる。

－適切な関心及び投資が必要。

### 3.2. 法令の効力・効果の評価

#### 3.1.1. 法令の効力・効果の評価内容

##### - 合憲性・合法性の評価

第一に、合憲性に関して。これは、法体系全体の統一性を確保する最初の要因である。合憲性は、法体系においてあらゆる法分野に属するすべての法規範に求められ、憲法に反する又は矛盾することは許されず、憲法の規定に沿った文書の統一性、序列、法的効力を確保し、上位、下位異なる序列を伴う名称に関する統一した体系を形成する。憲法に反する法律、国会常務委員会令は停止、廃止される。合憲性は、特定の語彙、規定を基礎とするだけでなく、憲法の本質、思想、原則を基礎として確立される。

第二に、合法性に関して。この用語は、「合憲性」という用語と共に用いられる際、一般的な（憲法も含む）法令の各規定に対する適合性という意味を含まず、法律及び法律の下位法の各規定に対する適合性に言及している。このような意味で、合法性を確保するために、法規範文書は法律が定める正しい権限、正しい手順、手続きで発行されなければならない。その一方で、文書形式は、文書の技術的な規定に適合しなければならない。

##### - 包括性、統一性、整合性に関する評価

法体系の包括性及び整合性は、その形式的な構造に体现される。つまり、法体系は社会生活の重要な領域における法令の調整要件を十分に満たす力を持たなければならない。これは、法規定が社会生活全体を包括する力を持ち、法令の調整が必要な典型的で普遍性を持つ重要な社会関係すべてに調整法が存在することが求められる。

法体系の包括性、整合性は、以下のような様々な異なるレベルで評価されなければならない。法規範ごとに論理的で緊密な構造を有すること。法制度ごとに必要な法規範が十分であること。法分野ごとにその構造に沿った法制度が十分であること。法体系は、国の各発展段階における社会関係の発展要件を満たす法分野が十分であること。これにより法規範文書は包括的で整合的に発行されることが求められ、実体法の重視だけではなく、手順、手続きに関する形式法にも注意を払わなければならない。同時に文書の実施ガイダンスのための詳細規定文書の発行も十分に行わなければならない。

法体系の統一性は、互いに密接な繋がりを有するだけでなく、内在的な統一性を有する法体系の構成分野間に体现される。法体系の統一性は、体系全体並びに構成分野ごとにも体现されなければならない。法体系の分野ごとに、また異なる分野において法規範の反復、重複、互いに矛盾する現象はない。これにより、法規範文書は、内容に関する統一性、融合性を確保するだけでなく、それらの法的価値に関して文書ごとの序列性を確保しなければならず、中でも憲法は最高位の法的効力を有する基本法であり、すべての他の法的文書は憲法に適合しなければならない。

実定法体系の評価は、体系における統一性を確保するために法体系の統一性を主に評価する。法体系における「統一性」は、「合憲性」及び「合理性」とは異なる。

「法体系の統一性の確保とは、法規範文書体系全体に政策内容が一貫して表れることを確保することであり、低い法的効力を有する文書は、より高い法的効力を有する文書に適合し、そのどちらも憲法の規定に適合しなければならないとする原則に基づいた法規範文書体系の序列性の確保を基礎とし、全法体系における同一の法分野又は異なる法分野の法規範、法制度が、互いに適合し合い、矛盾や重複がないことを確保することであると理解される。」

＋法体系の統一性の要求：

法体系の統一性を確保するために以下の要件を満たさなければならない。すべての法規範文書、法規範は憲法の規定に適合する。下位機関が発行した法規範文書、法規範は上位機関の文書、規範に適合する。人民委員会が発行した文書、規範は同レベルの人民評議会の文書に適合する。ある機関が発行した法規範文書、法規範は互いに統一され、法規範文書に内在する法規範は互いに統一される。法規範文書に内在する各法規範は互いに統一される。法規範文書はベトナム社会主義共和国が加盟する国

際条約に適合する。各文書は調整形式と調整内容の統一を確保する。使用する文書技術は一貫性を有する。

＋我が国における法体系の統一性確保の評価内容：

現行の法規定によると、法体系の統一性確保は、法規範文書の発行前及び発行後の両段階で実施される。

第一段階で、法体系の統一性確保は、法規範文書の制定、発行過程の各ステップ、各工程に焦点を当てる。これにより、その責任は、文書の制定、発行過程に参加する多くの異なる主体に委任される。その中で、1つの主要主体が文書の草案の合憲性、合法性及び法体系との統一性の確保のために、査定、審査の責任を負う。

第二段階で、法体系の統一性確保は、法規範文書の監察、検査、精査を通して実施され、矛盾、重複する法規範文書を適宜発見し、統一性の確保のため、法体系から排除する。

上記の規定の実施により、発行される法規範文書の質は向上し、法体系の整備及び完成の目標に大きく貢献する。しかしながら、実践上は、主に法律の下位法、国会常務委員会令に集中して、発行される法規範文書が統一性を確保しない場合が多く発生している<sup>44</sup>。

#### - 施行可能性・実情との適合性に関する評価

法令の施行可能性とは、法規定が現在の経済、政治、社会条件において施行の可能性を有することを意味する。

<sup>44</sup> 政府の報告によると、2006年、2007年、2008年及び2009年上半期6カ月で、司法省は、各省庁、部門、省レベルの人民評議会及び人民委員会が発行した16,143通の文書を精査、検査し、その中から1,388通、8.6%の法令に反する兆候がある文書を発見した。2006年は、各省庁、部門、省レベルの人民評議会及び人民委員会が発行した文書4,215通の中から、法令に反する兆候がある286通に対し処理又は処理の建議を行った。同じく他の各年は、2007年：320/4,472通、2008年：490/4,646通、2009年上半期6カ月：292/2,810通（2009年8月17日付け政府報告書第127/BC-CP号）

法規範文書の検査、処理に関する2003年11月14日付けの政府議定第135/2003/ND-CP号の5年実施に関する取りまとめ会議における司法省、法規範文書検査局の報告によると、2008年までに司法省は、3,460通の誤りの兆候がある文書を発見した。その中には、省庁レベルの文書が333通（10%）、省レベルが3,127通（90%）あった（出典：法規範文書の検査、処理に関する2003年11月14日付けの政府議定第135/2003/ND-CP号の5年実施に関する取りまとめ会議資料）。「法律化に向けたまとめの過程で、主に経済分野に集中して、法令に反する兆候がある文書が現在かなりの比率で存在することが分かった。代表例は、各地方における投資誘致の企業優待政策である。初期の評価では、この優遇政策は、ほぼどの省においても、特に税制優遇、土地収益の分野、投資家サポートのための国家予算の使用に集中して、法令に反する兆候がある。」「上位国家機関の文書に反する又は越権の内容を有する破棄、廃止が必要な文書は4-5%、法的根拠が保証されないものは20%以上、発行機関の名前違い、文書番号、記号違いは15%、表示形式違いは50%、文書の署名、捺印違いは5-6%を占める。」

（ベトナム経済タイムズより - <http://vietnamnet.vn/kinhte/chinh sach/2006/02/539965/>）



この特性は、発行された法規定が、現行の法令の施行及び適用体制に適合することで体现される。法令を発行する際、国の経済、政治、社会条件で、その法規定又は文書が実施できるかどうかを審理し、同時に、国家組織機構、幹部、公務員のレベルで実施することができるか、国民の教育レベル、法律に関する見識レベルなど、その他の条件を考慮しなければならない。

法令の適合性は、常に国の経済社会の発展レベルに相関する法体系の内容に体现される。法体系は経済社会の発展レベルを正しく反映し、そのレベルより高くも低くもない。

法体系の適合性は以下の様々な面で体现される。法令は、国の経済条件に適合すること。国の政治的条件に適合し、最も重要なことは、政権政党の路線、政策に適合すること。その他の社会的な倫理、慣習、伝統及び規範に適合すること。その他に、国家の法体系は、国際条約及び慣行の基本原則に適合し、社会関係の類型ごとに適合する法令の調整方法で整備されなければならない。

#### - 実施コストと得られる成果に関する評価

数年前から、法規範文書の審理、評価は、内在的な指標に沿った評価に留まらない。今現在の法規範文書の存在意義は、調整された社会関係、適用対象に対する法規範の作用の結果である効果性という別の視点で審理される。

こうした傾向は、1970年代に米国の学者が開発した法の経済性分析学から発生している。この学説では、法分野における経済学の役割について強調されている。経済に関する理論を法分野に適用することで、取引コストに基づき法令の効果が評価される流れを生み出し、そこから法の経済学に関する理論が形成された。この学説によると、法規範の効果や、更に広義には、法規範文書の効果は、費やしたコストの視点から評価される。効果は実施コストに反比例する。規制が厳しくなればなるほど、総じて実施機関のシステムが巨大化し、決定を出す過程が遅く、行政手続は複雑で浪費が多いことに結びつくため、効果を得るのは難しくなる。

#### - 国民の満足度に関する評価

国民は法令関係及び政策に参加する最大の主体である。民主的法治国家において、法令は国民、市場及び発展を守る法的な手段である。従って、国民の満足は法令の調整の目的である。

法令に対する組織、個人の満足度の調査、評価（以下、満足度の調査、評価という。）は、国家機関、部局が提供した法的サービスの質を客観的に、正確に測定す

ることを目的とする。調査、評価を通して、長所、短所、その要因を適宜見つけ出し、文書の質、幹部、公務員、国民自身の法令施行の質の向上、法体系及び法令施行に対する国民、組織及び企業の満足度向上のための方策を構築し、実施する。

法令に関する国民の満足度の評価は、ベトナムでここ最近、新たに関心が持たれるようになった内容である。これは多くの場合、法律、行政手続に関する評価など、法令の具体的な内容において実施される幅広い問題である。従って、この評価はPCI指数<sup>45</sup>（各省競争力指数、*Provincial Competitiveness Index*）、PAPI指数<sup>46</sup>（ベトナム省レベルの地方政府における統治・行政効果指数）、公正指数<sup>47</sup>など、現行の評価指数の規定の総和に当てはめ、研究されなければならない。

**事例：障害者と関連する法的文書に関する国会常務委員会令の施行状況の総括に関する2009年7月15日付け労働・傷病兵・社会問題省の報告書第62/BC-LDTBXH号**

－報告書作成の根拠、理由：2009年法律、国会常務委員会令の制定計画に関する2008年11月15日付け第7期国会の議決第27/2008/QH12号を実施し、かつ第7期任期国会（2007-2011）の法律、国会常務委員会令の制定計画を補充し、障害者に関する国会常務委員会令に差換えられる障害者法の制定のための国会への提出の基礎とする

<sup>45</sup> ベトナムの各省・都市の行政の経済的運営及び民間企業の発展に有利なビジネス環境整備の質に関する評価指数及びランキング。ベトナム商工会議所及びベトナム競争力イニシアチブプロジェクト（米国国際開発庁（USAID）の支援によるプロジェクト）の共同研究プロジェクトである。2005年、初回は42の省・都市の結果を実験的に公表した。2006年の2回目以降はベトナムの全省・都市がランキングの対象となり、同時に指標の構成項目も追加・補強された。

<sup>46</sup> 2009年から今日までの、ベトナム科学技術連合会の地域社会開発研究・サポートセンター（CECODES）及び在ベトナム国際連合開発計画（UNDP）の共同研究活動の一環として、研究展開実施期間中、理論研究センター及びベトナム祖国戦線の戦線ジャーナル（2009年-2012年）、国会常務委員会の請願委員会（2012年中）、ベトナム祖国戦線幹部養成・科学研究センター（2013年から）を含む協賛団体の支援を得て行われた。各省・都市、郡・区、村・地区の祖国戦線委員会が、研究チームが実地調査を実施する条件の調整に協力した。

PAPIの評価内容は、政策の策定、政策の実施及び公共サービスの提供に関する監察の互いに影響しあう3つの工程に基づく。

<sup>47</sup> ベトナム弁護士連合会（VLA）及び地域社会開発研究・サポートセンター（CECODES）が、国際連合開発計画（UNDP）の支援を得て共同で作成した2012年公正指標。この指標は、ベトナム全国21の省・都市に暮らす、様々な社会階級に属する国民5,000人以上の実際の経験に基づく。

公正指標は、国民の公正性、基本的権利の確保における国家機関の活動効果に関する国民の意見及び見解を反映する。

公正指標は、国民の意見及び体験に基づいて、公正な統治及び法治制度の5つの側面、アクセシビリティ・平等・潔白性・信頼度・効果性、並びに基本的権利の確保を反映する。「公正指数報告書は、国民の公正なアクセシビリティを正確に反映する。また、社会のあらゆる階級に属する国民に対する公正性の確保における不備を克服するため、政策面に関して実用的な提言を行う。」（ファム・クォック・アイ、ベトナム弁護士連合会会長）

ため、労働・傷病兵・社会問題省は、障害者分野に関連する法令施行状況の総括報告を行った。

－報告書の主な内容：

＋カテゴリー1：障害者に関する法的文書の発行及び実施指導状況

＋カテゴリー2：障害者の実情及び関連する政策、制度の実施結果

このカテゴリーで、報告書は就職に関する法令の一般評価を以下のように示している。

「**一般評価**：10年前に発行された障害者支援制度政策は、障害者ケアに関する法的枠組みを形成し、中央から第三級行政までの職能を有する各機関の責任を明確化し、また障害者の職業訓練、就職及び基本的な社会サービスが享受しやすい環境を形成した。これにより、ここ数年の障害者の物質的・精神的な暮らしや社会的地位は改善に向けて一歩前進した。

しかしながら、文書体系に完全な整合性があるとは言えず、一部の政策の施行可能性が高くはなく、実施のための広報、検査、監察は恒常的でなく、財政的及び人的資源も実践の要件を満たしていないことが実施過程を通して分かった。」

＋カテゴリー3：障害者に関する法令整備の建議

**事例：2003年土地法の施行状況及び改正土地法に向けての総括に関する2012年9月6日付け報告書第193/BC-BTNMT号**

一般評価では以下の通り報告された：

#### 「1. 達成事項

2003年土地法は、2003年11月26日第6期国会、第4会期で採択された。2003年土地法の10年近い施行期間を経て、以下の主な成果が得られた。

－土地に関する政策、法令は徐々に整備され、社会全体に普及しており、社会の土地に関する法意識は以前に比べて向上し、経済発展、政治の安定性の堅持、社会保障の確保に積極的に貢献し、土地利用における国内外の投資家間の区別を縮小し、国家が土地収用する際の賠償、補助に関する不備を克服し、土地に関する紛争・不服申立の解決を刷新した。

－土地基金の配分は、経済社会の発展、国防、安寧の目的を満たす。土地使用構成の変更は、基本的には経済構成の変更に適合する。農地基金は、国家の食糧安全保障、森林保護・開発の要求を満たした。産業、サービス、インフラ整備、都市開発

のための土地基金は拡張され、国の産業化・近代化の推進要求及び都市化の要件を徐々に満たしつつある。未使用地の面積は基本的に活用された。

－土地使用者の権利は拡張され、国家がその行使を保証したことで、土地使用者が土地に関心をより深め、安心して投資し、生産、販売活動を発展させ、土地の使用効果を高めた。

－土地使用权を含む不動産市場は、比較的整合性のある活動・開発体制を整えた。市場メカニズムに近づく方向で、土地財政政策を徐々に整備し、社会的資本を市場に投入し、開発投資を誘致し、土地が内部資源、資本となり、国の発展に寄与した。

－土地に関する国家管理事業は、多くの変化があり、土地に関する国家管理組織機構の体制は徐々に強固となり、土地管理を担当する幹部は強化された。土地使用企画・計画は各行政レベルで整合性を伴って展開された。土地使用权・土地に定着する住宅その他の財産所有権証明書の交付が意識的に指導された。土地分野に関する行政手続改革が推進された。

## 2. 主な制限、課題

2003年土地法の施行により、多くの重要な功績をあげることができたが、施行状況の総括を通して、以下のような主な課題、不備が明らかになった。

－土地の法令及びその他の土地に関連する法令は、整合性に欠け、重複、矛盾する規定があり、適用を妨げている。一方で、土地に関する法令は、一部の内容に明確性、適合性がない。土地管理における権限分割は、中央の統一管理を確保する体制の規定に沿っていない。法令施行の監査、監察業務は厳格ではなく、土地に関する法令違反処理・制裁は、違反行為の十分な抑止力とならない。

－土地使用企画に最も重点的に体现される、国の経済社会発展に資する重要な内部資源となる土地に関する資源が十分に開拓、活用されていない。多くの場所で土地の使用は浪費的で、非効果的である。多くの土地面積が投資案件の実施のために収用されたが、投資の進捗が遅く、土地を無駄にしており、社会に多くの憤りを引き起こしている。多くの地方が土地使用权の競売、国家予算の増収のための「クリーンな」土地基金の設立体制の実施に前向きでない。

－土地に関する国家管理事業は、限定的かつ不備がある。土地使用企画の質は高くなく、専門分野の企画との整合性がなく、地域間、省間の接続性及び企画管理が脆弱である。土地登記、特に変更登記が適切になされていない。

－法令の規定に、土地所有者の代表としての国家の決定権の行使体制が明確になっておらず、国家、土地使用者及び投資家の間の利益について調和のとれた解決がなされていない。土地使用者の権利及び義務は、特に権利の行使条件について十分に規定されていない。土地管理・使用における規律、綱紀の執行が厳格ではない。

－土地に関する不服申立・告訴・紛争の解決の法令規定が要求を満たしていないことで、多くの行政レベルを経て解決が長引く事案が多数発生する。多くの判決、決定が法的効力を有するにもかかわらず施行されていない。土地に関する不服申立・告訴・紛争の状況が複雑化している。

－土地使用権を含む不動産市場は脆弱さを露呈し、安定的でなく、開発は健全性に欠け、「地下」取引は一般化している。土地価格の上昇が生じる土地投機の状況は、マクロ経済の安定性に少なからず作用した。社会政策の対象者、幹部、公務員、低所得者の住宅・居住地要件が満たされていない。都市の居住地に対する証明書の交付が遅い。税制政策は不動産市場を調節する役割を適切に果たしていない。

－土地に関する行政手続が必要以上に長く、解決に時間がかかる。一部の地方では、手続き・書類の追加を規定しているが、国民及び企業に十分に適切な情報を提供していない。土地の交付、賃貸、土地使用目的変更許可の過程の実施と投資及び建設に関する手続きが繋がっていない。手続きの実施における関連機関の間の連携がうまくできていない。

－土地管理に関する組織機構、幹部の能力は、任務実施の要求を満たしていない（特に第三級行政）。土地管理事業に資する技術的設備の建設投資が限定的である。」

### 3.1.2. 法令の効力・効果の評価主体

#### -3.2.2.1. 国家の自己評価（国家、人民評議会、行政機関、裁判所）

国家は先ず法令評価において法的権限・責任を有する基本主体である。2015年法規範文書発行法第34条は次のように規定する： 機関、組織、国会議員は、法律、国会常務委員会令の制定の提議の作成に先立ち、次の各活動を行い、又は権限を有する機関、組織に行うよう要求する： a) 法律、国会常務委員会令の制定の提議に関する法令の施行の総括；法律、国会常務委員会令の制定の提議に関する社会関係の実情の調査、評価 b) 法律、国会常務委員会令の制定の提議の作成を補佐するために関係する各事項についての科学的研究；法律、国会常務委員会令の制定の提議に関する情報、資料、ベトナム社会主義共和国が加盟する国際条約の研究を組織する。必要な

場合において、関係機関、組織、個人に対し、法律、国会常務委員会令の制定の提議  
に関する資料、情報の提供を要求する。

国家の法令評価は公式報告書の形式でなされる（国家行政機関の法令実施状況  
報告書、国会の各委員会の監察報告書など）。機関の種類によって、報告書の性質、  
内容は同様ではなく、自己評価や監察的、批判的評価の形をとる。

*\*国会、国会の民族評議会及び各委員会、国会議員団及び国会議員の評価*

ベトナムの立法過程において、国会の各機関及び国会議員の法令評価は、重要  
な役割を果たし、国民の代表機関としての性格を体現する。

+ 評価権：本主体の法令評価は、民選機関・議員の監察権及び質疑権の行使か  
ら始まる。これに基づき、（国会の）監察とは、国会、国会常務委員会、国会の民族  
評議会、委員会、国会議員団及び国会議員が、憲法、法律、国会議決、国会常務委員  
会令、国会常務委員会議決の施行において監察される機関、組織、個人の活動を監視、  
審理、評価することである。（国会の監察における）質疑とは、国会議員が、国家主  
席、国会議長、政府首相、大臣及び政府のその他の構成員、最高人民裁判所長官、最  
高人民検察院長官の責任に属する問題を挙げ、該当者に回答を要求する監察活動であ  
る。

+ 評価期間：法令評価は、国会、国会の民族評議会及び各委員会、国会議員団  
及び国会議員の活動プログラム及び活動計画に基づいて実施される。

+ 評価方法：監察対象の文書、報告書の監察、直接検証、考察、解説の要求。

例えば、2003年国会の監察法第27条の規定によると、国会の民族評議会、委員  
会の法令評価は、該当機関の監察活動を通して実施される。第27条の規定は以下の通  
り：国会の民族評議会、委員会は次の活動を通して監察する。

1. 評議会、委員会が担当する分野に属する、又は国会常務委員会の割り当て  
に従い、政府、最高人民裁判所、最高人民検察院の事業報告を審査する。

2. 憲法、法律、国会議決、国会常務委員会令、国会常務委員会議決及び上級  
国家機関の法規範文書に反する兆候を有する、政府、政府首相、大臣、省同格機関の  
長、最高人民裁判所、最高人民検察院の法規範文書、権限を有する各中央国家機関間、  
又は権限を有する国家機関と政治社会組織の中央機関間の合同法規範文書を審理する。

3. 必要な場合において、政府、省、省同格機関、最高人民裁判所、最高人民  
検察院に対し、評議会、委員会が担当する分野に属する活動に関する報告をするよう  
要求する。

4. 監察団を組織する。
5. 関係を有する機関、組織に構成員を派遣し、評議会、委員会が着目する問題に関して審理、検証する。
6. 市民の不服申立・告訴の解決の研究、処理及び審理を組織する。

**事例：法規範文書監察の結果報告に関する国防安寧委員会の2010年5月27日付け報告書第1107/QPAN12号<sup>48</sup>**

- 報告書作成の理由、根拠及び組織：法規範文書発行の監察に関する国会の国防安寧委員会の2010年活動計画及び2010年1月8日付け計画第922/KH-QPAN12号を実施するため。委員会の常任委員は、公安省、国防省、交通運輸省の職能を有する各機関と連携し、人民公安法、道路交通安全法、国家機密保護令、村公安令、ベトナム海上警察部隊令、国防産業令の詳細規定、施行ガイダンスの法規範文書の精査、対比、研究を主管した。同時に、拡大会議を開催し、公安省、国防省、交通運輸省の代表による、上記法律、国会常務委員会令の詳細規定、施行ガイダンスの文書発行の結果報告を聴取した。

国防安寧委員会は、2010年5月18日の第9回委員会本会議で、（上記各省の指導者、代表者参加の下）法規範文書監察の結果報告の草案に関する討論、付意見を組織した。

—報告書の主な内容（法令評価に関連して）：

法規範文書発行状況が示された後（I）、報告書には、安寧、国防に関する以下の法令（一部の文書）評価内容を含む評価、見解が述べられている（II）。

「時間の制約があり、詳細規定及び施行ガイダンスの文書や、特にセキュリティーを要する文書を十分に入手できない中で、上記法律、国会常務委員会令に対する詳細規定及び施行ガイダンスの文書発行状況の審理及び文書研究を通し、国防安寧委員会は、以下の利点及び制限、弱点を明らかにした。

## 1. 利点

上記の法律、国会常務委員会令の効力発生後、政府は各省への指導に焦点を当て、各省は権限に沿った詳細規定及び施行ガイダンスの文書発行について政府に進言し、同時に直接起草、発行するか、又は起草、発行の職能を有する各機関と連携する

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<sup>48</sup> 人民公安法、道路交通安全法、国家機密保護令、村公安令、ベトナム海上警察部隊令、国防産業令の詳細規定、施行ガイダンスの文書

ために積極的に文書を研究、起草した。発行済みのほとんどの文書は、文書の発行権限、手続き、手順及び形式に関し、法規範文書発行法の規定に基本的に適合している。規定文書の内容は、概して法律、国会常務委員会令における要求を具体化し、法体系における合憲性、合法性、統一性を基本的に確保し、文書形式と文書内容、文書発行権限の間の適合性を確保することができた。

詳細規定及び施行ガイダンスの文書発行活動を通して、上記の法律、国会常務委員会令の規定を早期に生活に浸透させ、徐々に効果を高め、人民武装部隊、道路交通安全分野に対する国家管理要求を満たし、国家機密保護事業を強化し、国防・安寧を確保し、国の経済社会発展において多大な貢献を果たすことができた。法律、国会常務委員会令の詳細規定及び施行ガイダンスの文書発行における進歩の1つとして、多くの規定を要する内容を1つの文書に取り入れ、発行すべき文書の数を削減したことが挙げられる。代表例は、道路交通法、人民公安法の詳細規定及び施行ガイダンスの文書である。

法律、国会常務委員会令が委任した内容の詳細規定及び施行ガイダンスの文書の起草、発行以外に、職能を有する各省・部門の国家管理業務を強化する為、各省は実践において発生する課題、要求される事項を調整する法規範文書を積極的に研究し、主体的に発行する。

## 2. 制限、弱点

### 2.1. 法規範文書発行の進捗に関して

上記法律、国会常務委員会令の詳細規定及び施行ガイダンスの文書発行の進捗は、全体的に、期間に関して法規範文書発行法の規定に沿った保証がなされていない。

—法律、国会常務委員会令が採択されてから、効力が発生するまで、職能を有する機関が詳細規定及び施行ガイダンスの文書を起草、発行するための期間は比較的長い。これまで多くの内容で（人民公安法は3つの内容、道路交通法は12の内容、村公安令は1つの内容、ベトナム海上警察部隊令は3つの内容、国防産業令は6つの内容で）詳細規定及び施行ガイダンスがなされていない。

—一部の内容でガイダンス文書が発行されたものの、規定による該当の法律、国会常務委員会令が効力を有する時期よりも遅い。具体的には以下の通り。

+2006年7月1日より効力を有する人民公安法：15ヵ月後に、ようやく政府は人民公安部隊の伝統の旗、公安章、階級章、徽章及び制服を規定する2007年10月30日付け議定第160/2007/ND-CP号を発行した。22ヵ月後に、ようやく政府は人民公安証



明書に関する2008年5月8日付け議定第59/2008/ND-CP号を発行した。21ヵ月後に、ようやく政府は人民公安に有期限で勤務する下士官、兵士の親族に対する制度、政策を規定する2008年4月24日付け議定第54/2008/ND-CP号を発行した。38ヵ月後に、ようやく政府は公安省の職能、任務、権限及び組織構成を規定する2009年9月15日付け議定第77/2009/ND-CP号を発行した。

+2009年7月1日より効力を有する道路交通法：9ヵ月後に、ようやく国防省は本法が委任する5つの内容（本法が効力を有する前の発行決定の差換え）の詳細を規定し、施行をガイダンスする2010年4月8日付け通達第32/2010/TT-BQP号、2010年4月8日付け通達第33/2010/TT-BQP号及び2010年4月8日付け通達第34/2010/TT-BQP号を発行した。

+2001年4月1日より効力を有する国家機密保護令：11ヵ月後に、ようやく政府は詳細を規定し、施行をガイダンスする2002年3月28日付け議定第33/2002/ND-CP号を発行した。17ヵ月後に、ようやく公安省大臣は上記議定の実施をガイダンスする2002年9月13日付け通達第12/2002/TT-BCA(A11)号を発行した。41ヵ月後に、ようやく政府は禁止区域・地点の特定に関して規定する2004年9月6日付け決定第160/2004/QD-TTg号を発行した。現在、2つの中央の部門、団体に未だに国家機密リストが完成していない。

+2008年7月1日より効力を有するベトナム海上警察令：15ヵ月後に、ようやく政府は本令の一部条項の詳細を規定し、施行をガイダンスする2009年10月19日付け議定第86/2009/ND-CP号を発行した。13ヵ月後に、ようやく政府首相はベトナム人民軍の軍章、階級章、徽章及び制服を規定する2009年8月26日付け決定第109/2009/QD-TTg号を発行した。本令及び議定が、政府首相、国防省大臣に規定を委任する一部の内容があるが、本令が効力を有した時点から22ヵ月後の今現在も、未だに発行されていない。特に、本令の第3条における規定に沿った各部隊の具体的な活動の連携及び責任の規定などの内容は、現実的に非常に緊急性を要するが、詳細規定及び施行ガイダンスの文書が発行されていない。

+2008年7月1日より効力を有する国防産業令：10ヵ月後に、ようやく政府は本令の詳細を規定し、施行をガイダンスする2009年5月13日付け議定第46/2009/ND-CP号を発行した。10の内容について、政府、政府首相及び各省・部門に規定を委任しているが、本令が効力を有した時点から22ヵ月後の今現在も、未だに発行されていない。

－法律、国会常務委員会令の一部の内容は、詳細規定及び施行ガイダンスの文書発行が政府、各省に委任されているが、該当法律、国会常務委員会令の発行以前に発行された文書が未だに適用されている。具体的には以下の通り。

＋人民公安法の実施ガイダンス：新しい状況における国家安寧、社会安全秩序を守る任務を実施する公安省と国防省の間の連携の規定を発行する 2003 年 6 月 2 日付け政府首相決定第 107/2003/QD-TTg 号を未だに適用している。

＋ベトナム海上警察部隊令の実施ガイダンス：2 つの内容は政府に規定が委任されているが、未だにこの関係の調整のために、本令が効力を持つ以前の文書を適用しなければならない（附録第 5 号参照）。

＋国防産業令の実施ガイダンス：1 つの内容は国防省に各省・部門と連携して規定文書を発行することが委任されているが、未だに本令が効力を持つ以前に国防省大臣が発行した 2007 年 5 月 18 日付けの決定第 84/2007/QD-BQP 号を適用している（附録第 6 号参照）。

－特に保健省、科学技術省、財政省は主管し、又は交通運輸省と連携して道路交通法の一部内容の詳細規定及び施行ガイダンスの文書を発行することを委任されているが、本法が効力を有してから 10 ヶ月以上経った今現在も、未だに 1 つも文書が発行されていない（附録第 2 号参照）。

## 2.2. 法規範文書の発行権限、手続き、手順及び形式に関して

－法律、国会常務委員会令の規定に沿った、適切な権限で発行されていない詳細規定及び施行ガイダンスの文書がある。例えば、ベトナム人民軍の軍章、階級章、徽章及び制服を規定する 2009 年 8 月 26 日付け決定第 109/2009/QD-TTg 号が政府首相により発行され、ベトナム海上警察部隊に対して適用されているが、ベトナム海上警察部隊令第 21 条における規定によると、該当内容は政府首相ではなく、政府に規定が委任されている。

－2009 年 1 月 1 日より効力を有する 2008 年法規範文書発行法の規定には：「*詳細を規定する文書の発行を委ねられた機関は、さらに委任することはできない。*」（第 8 条 1 項）及び「*詳細規定文書は、具体的に規定しなければならず…*」（第 8 条 2 項）とある。しかし 2009 年 1 月 1 日以降に発行された一部の詳細規定文書の内容は、大まかな規定で、下級国家機関に発行を委任しているものがある。具体的には以下の通り。

+村公安令の一部条項の詳細を規定し、施行をガイダンスする 2009 年 9 月 7 日付け政府議定第 73/2009/ND-CP 号は、公安省大臣に 4 つの内容の詳細を規定し、施行をガイダンスするよう委任している（附録第 4 号第 3 項参照）。

+ベトナム海上警察部隊令の一部条項の詳細を規定し、施行をガイダンスする 2009 年 10 月 19 日付け政府議定第 86/2009/ND-CP 号は、政府首相が 2 つの内容について発行し、国防省大臣が 6 つの内容の詳細を規定し、施行をガイダンスするよう委任している（附録第 5 号第 3 項参照）。

+国防産業令の詳細を規定し、施行をガイダンスする 2009 年 3 月 15 日付け政府議定第 46/2009/ND-CP 号は、各省大臣に 2 つの内容の詳細を規定し、施行をガイダンスするよう委任している（附録第 6 号第 4 項参照）。

各省・部門は政府から委任されているが、多くの内容についてまだ文書を発行していない。

### 2.3. 法体系における合憲性、合法性、統一性、法規範文書の内容と形式の適合性に関して

—詳細規定及び施行ガイダンスの文書における一部の規定は、該当の法律、国会常務委員会令に関連する規定との統一性が確保されていない内容がある。具体的には以下の通り：

+人民公安法第 36 条 2 項における規定には：「医療保険制度を享受しない勤務中の人民公安の士官、下士官、兵士の父母、配偶者の合法的な扶養者、配偶者及び 18 歳未満の子は、病気の診察、治療を受ける際、政府の規定に沿って、医療施設における医療費が免除又は減額される」とある。しかし、人民公安の有期限で勤務する下士官、兵士の親族に対する制度、政策（該当者の親族に対する医療保険カード交付を含む）を規定する 2008 年 4 月 24 日付けの政府議定第 54/2008/ND-CP 号には、18 歳未満の子という年齢制限がなく、人民公安法の規定に適合しておらず、安易な運用の拡張に繋がる。

+国家機密保護令の詳細を規定し、施行をガイダンスする 2002 年 3 月 28 日付け政府議定第 33/2002/ND-CP 号の第 10 条 3 項の規定には、「連絡部局を通して国家の機密性を有する資料、物品を輸送、受け渡しするすべての場合に、密封、封印の原則に沿って実施されなければならない。」とあり、第 10 条 4 項の規定には、「国家の機密性を有する資料、物品を輸送する際、十分な保管手段、警備を伴い、輸送過程の安全を確保しなければならない」とある。しかし上記議定の実施をガイダンスする 2002 年

9月13日付け通達第12/2002/TT-BCA(A11)号の第3条a号の規定には、「**国家の機密性を有する資料、物品は、輸送する際、適切な素材の確実な包装に入れ、必要時には、規定に沿って封印しなければならない。輸送手段はあらゆる状況において安全性を確保する。必要であると判断した場合は、該当の資料、物品の輸送に関して警備する者を配置しなければならない。**」とあり、上記議定の規定に適合しない。

+村公安令の一部条項の詳細を規定し、施行をガイダンスする2009年9月7日付け政府議定第73/2009/ND-CP号の第3条2項b号の規定には：「*thon・xom・lang・ap・ban・buon・phum・soc* 及び**同等の住民単位**には公安員一人が配置され…」とある。しかし、本議定では同等の住民単位の解釈や、それを特定する指標の規定もなく、村公安令第10条1項の規定には「公安員は*thon・xom・lang・ap・ban・buon・phum・soc*に配置される」とあり、同等の住民単位という規定がないため、上記規定に適合しない。

+国防産業活動に参加する条件、手続きを規定する2009年9月1日付け政府首相決定第111/2009/QD-TTg号における、用語解釈に関する第3条2項及び参加条件に関する第6条2項の規定によると、条件が整った個人、組織が参加できる範囲とは、**武器、軍事技術装備の研究、生産、修理、改善、近代化；インフラに関するサービス、取引、投資、技術移転、構築；物資、技術の購買、備蓄、保管；人材の訓練、養成**であるが、国防産業令の第10条2項の規定「**国防産業活動に参加する組織、個人は、入札又は発注方式による国防安寧産業製品・サービスの研究、生産、提供ができる**」に適合しない。

#### 2.4. 法規範文書の発行、送付及び適用の検査業務

—詳細規定及び施行ガイダンスの文書発行及び法令違反内容を含む文書に対する処理における各省・部門に対する政府の検査、督促業務は恒常的に実施されておらず、十分なレベルで関心が払われていない。

—（発行後の）詳細規定及び施行ガイダンスの文書の（監察、検査）権限を有する機関への送付は、規定に沿って恒常的に実施されていない。」

#### \*国家行政機関の法令評価

国家行政機関は法律を生活に直接組み込む「者」であり、よって、法令の効力、効果を誰よりも理解する者である。国家行政機関にとって、これは部門、分野又は管理区域ごとの法令実施、国家行政管理実施の報告である。

現在、国家行政機関の法令評価は 2008 年法規範文書発用法（2015 年法に差換え済み）、議定第 24/2009/ND-CP 号及び法令施行状況の監視に関する 2012 年 7 月 23 日付け政府議定第 59/2012/ND-CP 号に沿って実施される。

これにより、責任を有する各省、省同格機関、政府所属機関は、毎年定期的に自らが起草又は発行を主管した文書の施行を評価し、文書の施行に関して、適時実施を督促し、組織し、ガイダンスし、又は権限を有する機関に適合しなくなった規定を修正、補充、廃止するよう建議する。

文書の施行を評価する内容は以下の課題に焦点を当てる：

- －機関、組織、個人の文書遵守レベル及び文書遵守、不遵守の理由
- －文書の広報・普及業務の効果
- －文書における規定の合理性
- －財政的・人的資源及び文書を実施する組織機構に関する文書の施行条件の確保

自らが担当する部門、分野に関する、各省、省同格機関、政府所属機関の法律、国会常務委員会令、議定、政府首相の決定の施行の評価報告（議定第 24/2009/ND-CP 号の第 63 条 2 号に規定する内容）は、取り纏めて政府に提出するために毎年 10 月に司法省に送付する。

各省、省同格機関、政府所属機関の法制組織は以下の任務を有する：

－省、省同格機関、政府所属機関及び関連する機関に属する部局と、文書の施行評価において連携する。

－省、省同格機関、政府所属機関に属する部局に対し、文書の施行評価において監視、督促する。

－省、省同格機関、政府所属機関が担当する部門、分野に関連する文書の施行評価に関する省、省同格機関、政府所属機関の年次報告書を取り纏め、作成し、司法省が取り纏め、政府に提出するために同省に送付する。

－省、省同格機関、政府所属機関の任務に属する法律、国会常務委員会令、議定、決定、通達の詳細規定文書の起草において、省、省同格機関、政府所属機関に属する部局に督促する。

文書施行の監視、評価業務において、司法省は以下の責任を有する：

－文書施行の評価業務において各省、省同格機関、政府所属機関に指導、督促する。

－各省、省同格機関、政府所属機関による法律、国会常務委員会令、議定、決定の施行詳細規定文書の起草を監視、督促する。

－毎年12月に全国を範囲とする法規範文書の施行状況に関して取り纏め、政府に報告する。

一方で、大臣、省同格機関、政府所属機関の長は、法規範文書の質の向上において以下の責任を有する：

－2008年法（2015年法に差換え済み）及び議定第24/2009/ND-CP号に規定された法規範文書の制定、発行過程を遵守する。

－省、省同格機関、政府所属機関における法規範文書の制定業務の条件を確保する。

**事例：2000年婚姻家族法施行の総括に関する司法省の2013年7月15日付け報告書第153/BC-BTP号**

－報告書作成方法：9つの省・部門及び中央組織、63省中62の省・中央直轄市の総括報告書、138の関係者を有する機関・組織の意見、調査・座談会・シンポジウムの結果報告書に示された情報・データ・評価・判断を通し、司法省は本報告書を作成し、2000年婚姻家族法の12年間の施行の実情を通して得られた成果及び不備、制限を総括した。

－報告書の法令評価内容：

法律実施過程において得られた成果を分析した後、報告書は「2010年婚姻家族法の達成項目、未達成項目に関する一般評価」を以下の通り示した。

**1. 達成事項**

第一に、本法は、社会生活における家族の役割を掲げることにプラスに作用し、ベトナム民族の良き文化的価値観、倫理観の基準を守り、社会の中の個人の人格形成、品格・倫理観の養成、教育のための健全な環境を実現することに貢献した。社会に対して発揮される家族の役割を基礎として、婚姻家族法は、各地方の、また広義には国の人的資源の発展、経済社会の安定化と発展に積極的に貢献し、ベトナムと世界の国々との間の経済・文化交流を促進した。

第二に、婚姻家族制度、結婚、夫婦間の関係、離婚、父・母・子の特定、親子間の権利及び義務、家族構成員間の権利及び義務、扶養、後見、外国要素のある婚姻家族関係、国民、国家及び社会の責任の基本原則に関する具体的な規定を基礎と

して…本法は、ベトナムの進歩的な婚姻家族制度の構築、整備及び保護に貢献し、裕福、進歩的、幸福な家族の構築に貢献した。

第三に、家族構成員の対応のための法的基準、家族構成員の身分及び財産に関する権利・義務は規定され、更に整備されつつある。これを基礎として、家族及び家族構成員の合法的な利益・権利は行使、保護された。婚姻家族における女性と子供の人権及び市民権は、法律で尊重され、保護された。

第四に、本法は、家族構成員と社会のその他の主体との間の財産及び取引関係の安全性を促進、保証することに寄与し、家族の物質的・精神的生活を向上させ、経済社会の発展、第三者の合法的な権利・利益の更なる保護に寄与する法的枠組みを構築した。

第五に、外国要素のある婚姻家族関係における各当事者の合法的な権利・利益は、法律で尊重され、ベトナム国家の対外政策及びベトナム社会主義共和国が加盟する国際条約に適合する形で保護された。

## 2. 未達成事項

上記の事項を達成した一方で、婚姻家族法は以下のような多くの未達成事項を残している。

一 第一に、婚姻家族関係の本質は、民事・私事関係であるが、本法の一部の規定は、この特殊な私事関係領域である婚姻家族関係の本質に適合した法令調整の要求を完全には満たしていない。一部の関係において、婚姻家族の構成員は、家族及び自身のための最良の対応案の選択権がない。例：(1) 現行の婚姻家族法は、法定財産制度を唯一の財産制度として規定しており、合意による夫婦の財産制度、取決めによる財産制度の選択を夫婦に認める規定がない。この規定は、民事法令に規定された財産の所有者による自主的な合意・処分の権利の行使を保証しておらず、融通が利かず、財産権の行使、取引における明確性、第三者の合法的な利益・権利において、並びに婚姻家族に関する紛争解決のための法的根拠の保証において、「木が違えば花も違う、家が違えば状況も違う」という言葉のように夫婦、家族ごとの状況に適合しない。(2) 夫婦間の矛盾の解決制度において、本法は、和解・再結合による解決か、離婚による解決の2つの解決法しか示していないが、実際にはこの2つの解決法以外に、多くの夫婦が、婚姻関係、家族及び自分自身にとって最も適した解決に向うため、別居による解決法の選択を望んでいるが、その解決法については本法に具体的に記されていない。

－第二に、本法の一部の規定は、施行可能性が低いことから、婚姻家族に関する権利の公認、行使に多くの困難が生じている。例：(1) 本法の規定では、法令で定められた、所有権の登記が必要な夫婦の共同財産は、所有権証明書に夫婦両者ともその名が記載されなければならない。本規定は、法令の施行・実践において多くの困難を引き起こす。実際には、土地・住宅使用権といった財産に対して一定のレベルで適用されるが、(車両、証券など) その他の財産に関しては、基本的には所有権証明書に夫婦両者の名が記載されていない。(2) 家族構成員間の関係に関する規定は、原則的で、具体性がなく、実践に適合していないか、ベトナム家族の文化的・倫理的伝統を継承、発揮できていない。

－第三に、婚姻家族法は、これまで実践において存在してきた婚姻家族関係をすべて包括し切れていない。この現状は、婚姻家族関係の安定性を欠如させ、婚姻家族分野における人権、市民権の行使を尊重、保護する党及び国家の正しい政策を十分に体现していない。従って、同性結婚、結婚登記をせず夫婦同然の同棲をする関係、別居、代理出産などの課題は、今回の婚姻家族法の修正、補充による解決の方向性を持って、厳粛に、不足なく、抜本的に研究される必要がある。

特に現在の経済社会の統合及び発展の過程においては、市場経済のマイナス面からの影響により、徐々に崩壊し、色褪せつつある社会的基準、倫理的価値観、家族の慣習、家風、家族の伝統や、増加傾向にある離婚、別居、結婚登記をしない夫婦同然の同棲、一夫一妻制の違反、家庭内暴力、祖父母、両親、配偶者、子供や孫、他の養育者の虐待や迫害、社会の悪弊、未成年者の犯罪は、家族及び社会に対して多面的に深刻な結果をもたらした。これらの結果の一部の原因は、結婚登記をしない夫婦同然の同棲をする男女関係、別居、代理出産、家族構成員間の権利・義務に関する条項・規定の欠如によるものである。

－第四に、本法の一部の規定は、以下のベトナムの民事関係、国際統合の実践的要求を満たしていない。(1) 夫婦間の所有制度は、夫婦での投資・経営への参加、夫婦のどちらか又は両者との取引の確立、終了における第三者の権利・義務に関する規定が欠如しており、外国要素のある結婚、離婚、後見に関する一部の規定は、現在の外国要素のある婚姻家族関係の実践に適合していない。(2) 一部の規定は、外国の裁判所及び外国の権限を有する機関の判決、決定の公認、外国要素がある婚姻家族に関する書類、資料の合法化、親子の認知条件に関して具体的に規定していない。



－第五に、これまでに関連する多くの法律文書が、修正、補充又は新たに発行された。例えば、2003年土地法、2004年児童保護・ケア・教育法、2004年民事訴訟法、2005年民法、2006年男女平等法、2006年高齢者法、2007年家庭内暴力防止法、2008年国籍法、2010年養子縁組法などである。こうした背景の下、現行の婚姻家族法の多くの規定は体系性を確保せず、関連する法律文書との整合性、統一性がない。例えば、結婚年齢、養子縁組、後見、家族構成員の財産及び所有権、家族構成員間の関係、婚姻家族に関して要求する権限（違法結婚の解消、父母の権利の制限など）に関する規定は、民法及び関連するその他の法律の規定との整合性がない。

前述の不備、制限は、婚姻家族関係の安定性、婚姻家族に関する個人の合法的な利益・権利の行使、保護に影響するだけでなく、婚姻家族分野における法令施行業務の効果を減少させる。実際、今日までのベトナムの家族の古き良き社会的基準、倫理的価値観の多くは、徐々に崩壊し、色褪せつつある。ますます複雑化する離婚、別居、結婚登記をしない夫婦同然の同棲、一夫一妻制の違反、家庭内暴力、祖父母、両親、配偶者、子供や孫、他の養育者の虐待や迫害、社会の悪弊、未成年者の犯罪などの現象は、多くの家族及び社会に対して多面的にマイナスの結果をもたらしている。

現行法の不備、制限を克服し、現在の経済社会の発展段階及び次の発展段階におけるベトナムの婚姻家族制度の構築及び整備に関する客観的な要求を満たすため、2000年婚姻家族法の修正、補充は必須事項である。」

#### 3.2.2.2. 社会的側面からの評価

##### － 法的文書のインパクトを受ける対象

この対象は法令の調整対象に属するグループである。通常、このグループは基本的な2種類の対象があり、1つは国家の機関・幹部・公務員（法令施行者）、もう一方は組織・個人・（国内外の）国民である。

発行された法令がどのように実施されるのかは、法的文書のインパクトを受ける対象の法令の受容に大きく依存する。特に、海外投資、社会保障などのデリケートな分野では顕著である。それ故、政策を発行する前に、起草を主管する機関は、通常国内外の投資家や専門家の参考意見を聞く。これらの対象こそが、法令、政策の質及び効果を最も正確に評価する。

##### － 国民

国民は多くの様々な形式、異なるレベルで法令評価を行う。例えば、建議・反映・不服申立・告訴の権利、立法過程への意見表明、国会議員の有権者との接触、裁

判機関が法令の効果を総括する根拠とするため、法廷での自らの弁護、控訴をし、法令に関して評価することなどを通して行われる。

－ *経済組織・社会組織・非政府組織*

経済組織・社会組織・非政府組織は、法令評価を含む国家管理への参加権を有する社会的実体として法令評価に参加することができる。他の側面では、法令のインパクトを受ける対象、又は法令評価への参加任務を委任される対象にもなりうる。この対象グループの法令評価は、市民社会的な傾向があり、社会の国家生活への参加の強化に寄与する。ベトナムでは、これまでの社会組織・非政府組織の法令評価は、PCI 指数（各省競争力指数、Provincial Competitiveness Index）、PAPI 指数（ベトナム省レベルの地方政府における統治・行政効果指数）、公正指数などに関する評価といった、法令に関する社会学的調査案件を通じた実施に関心が持たれてきた。

**事例：2014 年法令施行状況監視事業に関する司法省の 2015 年 3 月 18 日付け報告書第 64/BC-BTP 号**

－ *報告書作成方法*：司法省は、法令施行状況監視に関する報告要綱及び 2014 年の一時的な使用様式を発行し（2014 年 10 月 6 日付け公文書番号第 4196/BTP-QLXLVPHC&TDTHPL 号に添付）、規定に沿って 2014 年法令施行状況に関する報告実施を提議する各省、省同格機関及び各省・中央直轄市の人民委員会に送付した。

報告書は、24 の省、省同格機関、政府所属機関、51 の各省・中央直轄市の人民委員会（又は司法局）の報告書データを基礎として作成された。

－ *報告書の主な内容*：

2014 年法令施行状況監視事業報告書は 10 の付録を含む 3 つのカテゴリーから成る。

**第一カテゴリー**：2014 年法令施行状況監視実施展開の指導事業において得られた成果、課題、制限、困難、障害に関する評価。ここでは以下の内容に焦点を当てる：(i) 主体の改善 (ii) 業務の普及、訓練、指導 (iii) 法令施行監視業務の実施保証条件（組織機構、編成、経費）(iv) 各省、部門及び地方の 2014 年法令施行状況監視計画の構築及び実施組織。

**第二カテゴリー**：(I) 法規範文書施行展開、組織状況 (II) 法令遵守状況を通して 2014 年の全国範囲での法令施行状況に関する評価。

**法規範文書施行展開、組織状況に対して**、(i) 法規範文書施行展開、組織 (ii) 法規範文書の詳細規定文書の発行状況に関する評価報告。

**法令遵守状況に対して**、権限を有する国家機関、権限保持者及び社会的組織・個人の法令遵守状況評価報告。法令遵守レベルを評価するために、報告書は推定法と消去法を用いる。これにより、一部の分野に対する法令違反状況を基礎とした遵守レベルを評価する。違反行為の少ない分野、又は違反行為数が減少した分野は、法令遵守レベルが高い、又は遵守レベルのプラス変化と見なされ、その逆もまた同様である。

評価される分野ごとに、報告書は、違反行為の数、2013年比の増減レベル、一般的な違反行為、違反行為の原因及び結果を先ず明確にする。

権限を有する国家機関、権限保持者の法令遵守状況に関して、報告書は (i) 監査業務 (ii) 不服申立・告訴の解決業務 (iii) 行政案件の解決、審理業務 (iv) 国家賠償業務の結果を通して遵守状況进行评估する。

組織、個人の法令遵守状況に関して、報告書は国民、企業の (i) 刑事法違反状況 (犯罪状況) (ii) 行政法違反状況 (iii) 紛争・不服申立状況 (民事案件の解決、審理業務状況) を通して遵守レベルを評価する。

### **第三カテゴリー：提案・建議及び主な方針・措置**

報告書は、法令施行監視業務に対して示された主な方針及び措置を提案し、同時に (i) 法令施行監視業務 (ii) 法令施行状況に対する提案・建議を順に示す。

## **第4章**

### **ケーススタディー・課題**

#### **課題1：**

#### **法令と公共政策の区別**

1. 現在の行政改革は公共政策か法令か？その証拠は？
2. ベトナムにおける現在の行政改革に関して法規体系が存在することを立論で示し、証明しなさい。

#### **課題2：**

#### **法令と公共政策の関係並びに交差する点**

現在のベトナムにおける男女平等問題に関して法令と公共政策の関係及び交わる点。

#### **課題3：**

#### **実践における法令と公共政策の差異**

ある論文の一節より：

「…48 の省・都市における財政省の調査によると、33 の省・都市が法律に則っていない投資優遇政策を決定している。ベンチャー省では、「政府の政策規定を享受できる他に、BOT、BTO、BT 方式の投資案件は、省が法人税の減免を4年追加し、その後9年間においては50%減税する。」と規定される。クアンナム省では、3年の期限で国家の規定より約3~10%低い税率を適用している。ハティン省は、地代免除期間を7~13年延長し、地代減額期間を5年、又は案件の「実施期間中」に引き延ばす。フーイエン省では「政府の規定による減免期間終了後、投資家は8~20年、地代の50%を減額される」と規定される<sup>49</sup>。ゲアン省でも、ヴィン市、クアロー町への投資案件に対して、地代免除期間を延長し、平野部の投資案件に対しては、地代免除期間を20年延長する。ヴィンフック省は、困難な地域の地代を100%免除する。財政省の統計によると、現在全国の18の省で予算に関する不適切な規定があり、21の省が土地政策に関して「枠組みを超えた」規定を設け、11の省は法人税法に適合しない規定を設けている。ほとんどの省では、投資家に対して非常に高いレベルで土地に関する租税を優遇し、減税期間を10~20年延長している。また、法規範文書発行分野において、多数の省が交通安全秩序違反に関する法令の規定に反する行政処分文書、処分文書を発行している。司法省によると、2005年の初期調査だけでも、「33の省・都市が、政府の議定に反する84の文書を発行し、その内訳は、省レベルの人民委員会が76通、省人民委員会委員長が7通、人民評議会が1通であった」<sup>50</sup>。これらの事象は明らかに国家管理の全体的な効果に大きく影響する…」。

以下に答えなさい：

1. 上記の状況の名称は？
2. 上記の状況の原因を指摘しなさい。
3. 法令と公共政策の観点に立ち、解決措置を提示しなさい。

#### 課題4：

##### 立法経験

1. 法律、法令制定の提議における政策の影響評価の作用の分析。
2. 国会議員の立法の提議権行使における困難とは何か？海外の議員の立法経験を参照にした解決措置。

<sup>49</sup> 行政改革と管理分割：課題と突破口（ベトナムにおける刷新20年総括計画のテーマ）

<sup>50</sup> 行政改革と管理分割：課題と突破口（ベトナムにおける刷新20年総括計画のテーマ）

## 6. 学習資料 (教科書、講義、参考資料)

### 6.1. 必読資料

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7. 授業実施形態

番号	授業実施形態			計 (コマ)
	講義			
	理論 (コマ)	課題 (コマ)	セミナー (コマ)	
1	4	0	2	6
2	8	0	42	110
3	8	0	42	110
4	0	0	4	4
計	20	0	10	30

8. 試験手法・形式- 科目学習成果の評価

番号	評価形式	比重
1	科目中間試験	30%
2	科目修了試験	70%