

Representative Democracy Innovation in Vietnam

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Abstract

The paper analyses limitations and shortcomings of representative democracy in Vietnam today as incomplete election principles, limited selection ability in election of voters, weaknesses in election campaign, weaknesses in electoral district design, weaknesses in establishing the relationship between the National Assembly delegates and voters, dependence and no real power of National Assembly. On that basis, the paper offers some solutions to innovate and improve the representative democracy in Vietnam today.

Keywords: *Representative democracy, limitations and shortcomings, innovation.*

Foreword

Vietnam as well as most countries in the world today establishes the principle that all state power belongs to the people and the people exercise their power by the representative democracy and direct democracy through referendum and other direct democratic measures. However, for modern countries, the population is often large and very large, so the direct democracy is rarely used, the most common form is representative democracy- the people exercise their power through the Parliament/National Assembly, the local Councils/local People's Councils. The representative democracy in Vietnam appeared after the August 1945 revolution, went through many stages with the different provisions of the Constitution and Election Laws. However, because the electoral regime existed in the unitary democracy and many progressive electoral principles have not been studied in a thoughtful manner, Vietnam's election regime has so far been limited and inadequate. The representative democracy in Vietnam is currently a weak regime in the constitutional law. Currently, in the

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period of the rule of law state construction, international integration and globalization, the need for democratization in social life is higher and higher. The electoral regime reform allows citizens to have the higher chance to be elected and self-nominated to devote their strength and wisdom to the society, thereby making the country developed quickly and drastically in the trend of building a rich, powerful, fair, democratic and civilized society. Elections are considered the heart of democracy. Election is a political beauty contest. Consolidation of the electoral regime as well development of an advanced electoral regime will help Vietnam have a strong state machinery, helping the state to build a beautiful, democratic and rich country (Thai Vinh Thang, 2002).

Discussion

Incomplete Election Principles

Currently, the election principles in our country are: universal, direct, equal and secret ballot. Compared to the 1946 Constitution, Vietnam's first Constitution, we lack a principle of free election². The principle of free election allows citizens to decide whether to vote or not. No individual or organization has the right to force citizens to vote or not to vote. Voting in the full sense includes both the right to vote actively (the right to vote) and the right to vote passively (the right to be voted). Therefore, the principle of free election includes the candidacy freedom of citizens. Due to lack of this principle in the 2013 Constitution (except for the 1946 Constitution; 1959, 1980, 1992 and 2013 constitutions do not have this principle), in fact Vietnamese citizens' candidacy right is limited by the negotiation regime before the election. Negotiation has limited citizens' candidacy right and ability to choose when voting. In the 12th National Assembly election, there were 225 self-nominated candidates; however after three times of negotiation, there were only 30 self-nominated candidates left. And finally there was only one winner (Thai Vinh Thang, 2020). Overseas electoral experience shows that, in order to ensure the candidacy right of voters, the law needs to clearly stipulate the eligibility conditions of a candidate. These are very specific and very easy- to- identify conditions. For example: 21 years old and above, a clean criminal record (no criminal record), a full payment of the deposit (this amount will be refunded to candidates if they get the number of votes exceeding the minimum threshold in the election, for example, 5% of the valid votes; otherwise, the deposit will be put into public funds). The

² The Constitutions of Vietnam: 1946,1959,1980, 1992, The gioi publishers,1995, p.16

deposit payment is aimed at promoting the self-nominated candidates' responsibility. To ensure voters' candidacy freedom and higher ability to select, elections will be conducted or voted in two rounds or one-round with a relative majority/simple majority. In France, in the presidential or parliamentary elections, two-round elections (Andre Blais and Peter John Loewen, 2007) are often applied because the French prefer the electoral model of which the winner has an absolute majority, at the same time, voters have the widest selection range. Round 1 is to select candidates with high credit in the second round (for example, in France, in the House of Representatives election, those who earn 12.5% or more of the votes will be entitled to the second round) (Thai Vinh Thang, 1998). For presidential elections, the first round is usually aimed at selecting two candidates with the highest number of votes to enter the second round. Voting in France is intended to select the candidate with the highest votes and must reach an absolute majority (The winner must gain more than 50% of the votes), so if no one has reached the absolute majority, those with the highest votes must be selected to enter the second round. Two-round election is a way of voting to ensure citizens' candidacy right. In Vietnam, President Ho Chi Minh, the beloved leader of the nation, world cultural celebrity, once wrote: *"General election is an opportunity for the entire people to freely choose talented people with good virtue to shoulder the work of the country. In the general election, all people who want to take care of the country career have the candidacy right. All Vietnamese citizens regardless of gender, poorness or richness, religion, race, class, partisan have these two rights. Therefore, the general election is freedom, equality, i.e. democracy, solidarity"* (Ho Chi Minh, 1995). According to the thought of President Ho Chi Minh, the competent election-organizing agencies must create favorable conditions for those who have good virtue and talent to stand for election to take care of the country career; however, the current practice in Vietnam shows that it is very difficult for a self-nominated candidate to pass the negotiation round and become the winner. Why are self-nominated candidates so hard to win, we have to reconsider our electoral system (Thai Vinh Thang, 2010). At present, the negotiation process to select candidates for the National Assembly election is conducted in 5 steps:

- Step 1: Organize the first negotiation conference to discuss the structure, composition and number of candidates;
- Step 2: Agencies, organizations and units select candidates;
- Step 3: Organize the second negotiation conference to discuss a preliminary list of candidates;

- Step 4: Organize the conference to get opinions and trust of voters about candidates at the residence and place of work (if any);
- Step 5: Organize the third negotiation conference to make an official list of National Assembly candidates.

The limitations of this negotiation process are often based on the direction of the superiors, so people often say “Party elects, people vote”. Voters often complain that if the Party elects, the Party should vote; the people vote formalistically. If people vote, first let people choose their people to run for election and must have a worthy rate for self-nominated candidates. Up to now, on the one side, the negotiation process is often in structure, on the other hand, there is no equal procedure between self-nominated candidates and those recommended by organizations. For example, the person who is recommended by an organization will get confidence votes by public voting and the self-nominated candidates get confidence votes by secret ballot (Thai Vinh Thang, 2010). The negotiation process eliminates the majority of self-nominated candidates. Previously, according to Decree No. 51 dated October 17, 1945, the candidate was free to select the place where he wants to run for candidacy (Article 12). Decree No. 51 also stipulates: “Candidates send directly their nomination form and certificate of candidacy eligibility issued by the Administration Committee at their native place or their residence to the province or city People’s Committee where they directly run for candidacy. Article 12 of this Decree clearly stipulates that the candidate is free to select the place where he wants to run for candidacy but only one place can be chosen. So, it can be seen in the first general election to elect the 1st National Assembly in Vietnam, all Vietnamese citizens aged 21 and over, meeting the conditions of the candidate in accordance with the law and submitting their nomination forms are named in the list of candidates and is be eliminated due to the current preliminary negotiation. A democratic election must first ensure candidacy freedom of the people, then the selection freedom of the people. Everyone knows that in sports, teams wanting to enter the finals have to pass the qualifying rounds. No team has been eliminated for reasons such as a lack of a senior player or coach. The teams are eliminated only on the basis that they are defeated in the match. Election is the same, candidates only accept defeat when they do not gain enough votes of voters, never accept defeat when they are eliminated by the negotiation procedures before the election. Because negotiations have eliminated most self-nominated candidates, the proportion of non-Party members in the National Assembly is very low, only about 5 million party members. The current population

of Vietnam is estimated at 95 million but the proportion of the non-party members in the 16th National Assembly is less than 5% (The 16th National Assembly has 496 delegates, of which only 21 are non-party members, accounting for 4.25%).

Voters' very Limited Selection Ability in Elections

In elections in recent years, a common practice is that voters' selection ability in elections is often very low. The ballot papers delivered to voters are often not enough a half for the people to choose. Normally, this ratio is 3/5 (voters select 3 out of 5 candidates) in the National Assembly election and usually 5/7 (voters select 5 out of 7 candidates) in the People's Council election. Current election methods show that the negotiation step is more important than the election one. In the National Assembly elections, the election organization decide 60% candidates (3/5) and voters have right to eliminate 2 out of 5 candidates (or the voters decide 40% candidates (2/5)). In the People's Council elections, the election organization will decide 72% (5/7) and voters can only choose 28 % (2/7). Looking back at the election history in our country, in the 1st National Assembly election, the citizens' voting ability is much higher than today. According to the article of the top-ranking General Vo Nguyen Giap *in the 1946 Constitution and the development of Vietnamese Constitutions*, in the 1st National Assembly election, 7 National Assembly delegates were selected from 76 candidates from Hanoi. In the list of candidates, President Ho Chi Minh was elected with a very large number of votes. Thus, the people's selection ability was very high, one delegate was selected among more than 10 candidates (Thai Vinh Thang, 2014). Not only in Hanoi, the voters' selection ability were also very high. The ratio of candidates and the elected positions was 60/7 in Kien An, 52/7 in Ha Nam and also has the same in other provinces (Thai Vinh Thang, 2014). Increasing voters' selection ability is not a difficult electoral problem. Democratic countries around the world have also applied many voting methods to enhance their ability to select qualified people in elected bodies and people-elected positions like the President, Governor or Mayor. In the world today, there are many good voting methods. Just if Vietnam attempts to learn and apply them, we will have higher-quality representative offices than that today. In the majority election system, there are Simple majority, Absolute majority and Overwhelming majority. The absolute majority requires the winner to have the highest number of votes, at the same time, the number of votes received must be over 50% of the valid votes. The overwhelming majority/intensifying majority requires the winner to be reputable and gain at least 2/3 of the valid votes. Meanwhile the

simple majority/relative majority means that the winner is the person with the highest number of votes, even more than 50% of valid votes. The relative majority is established from the point of view: “The first past- the post” (The first person is the winner). Under the relative majority election system, a lot of candidates are allowed for a delegate post. For example, 500 parliamentary posts may be allocated to 500 electoral units, each election unit only elects 1 delegate. Each election unit may have 20, 25, 30 candidates. For the reason that there many candidates are allocated to one post, the votes will be scattered and the winner may only gain 45% or 35% of valid votes. This person is considered worthy of being elected because he/she gains the largest number of votes. This voting method is always effective and inexpensive. Its advantage is to create maximum conditions for citizens to choose candidates. However, its limitation is that the winner may sometimes not be the representative of a majority of voters, so many countries apply two-rounds elections. Round 1 will select two candidates with the highest number of votes in the second round if no one has an absolute majority. The second round will choose the winner under the absolute majority method. With the above two-round election method, we will enhance the people’s candidacy right and selection ability.

Currently, in addition to the majority system, the Proportional system is also quite popular because most countries in the world today implement a pluralist democracy, allowing parties to be free to run for election. The proportional system is commonly used in Parliamentary elections and local council elections; voters can vote for parties (can vote for both parties and their specific candidates); the number of posts assigned to the parties corresponds to the number of votes for the parties. Under this election method, the parties running for election always have, more or less, their representatives in the Parliament and the local Council. Vietnam is one of the few countries in the world that maintains the singularity democracy (Nhất nguyên), so it cannot apply the proportional system. However, we can apply the two-round system in combination with the relative majority (in round 1) and the absolute majority (in round 2) to enhance the people’s selection ability and the candidacy of talented people with good virtue and aspirations to help people and the country and devote their talents to society.

Weaknesses in Election Campaign

In Parliamentary elections of countries around the world, when Parliamentary candidates run for election, they must have their own specific action program if they are elected and must promise to do what is necessary to their voters, their country and be faithful to their

promise. Parliamentary candidates must have a passion for the work of Parliamentarians, the desire to become a Parliamentarian and have a specific action program to show voters their ability. Through the election process, persuading others to vote for themselves, they consume a lot of time (and sometimes spends a lot of money) to become a parliamentarian, so foreign Parliamentarians are often very proud and strive to deserve the title of Parliamentarians. In Vietnam, Congressmen/women are mainly selected by organizations, of whom many do not really want or have no passion for Congressmen/women but due to their position or the structure arranged by the organization, they become the National Assembly delegates. The National Assembly delegates do not need to have the election campaign, do not spend much time, energy and money to become Congressmen/women, so after being elected, they often do not have any personal action program but all are under the assignment of the National Assembly. If the members of the National Assembly do not fulfill their duties (except for a crime), they are not subject to any pressure from the voters who elect themselves. Overseas election campaign can be considered as the soul of the election; people can hardly choose the talents if the election is not competitive and candidates have no election campaign. Election campaign is an informative channel that helps voters interact with candidates. Through the election campaign, voters can assess the candidates' election programs that are suitable for the people and meet the country's requirements at the election time. Through the election campaign, people can predict what candidates will do after they are elected for the benefits of the state and the people.

Weaknesses in the Electoral District Design

The electoral unit is called Constituency or Electoral district. The Electoral district can be designed based on geography and population or sector and block. Regardless of the criteria, the constituency means the structure of representation. Currently the constituencies in our country are established according to geography and population criteria. It means that a constituency is a certain district with a certain population. Decree No. 51/SL dated October 17, 1945 stipulates: "Constituency is a provincial administrative unit, which means that people in each province elect their representatives for the National Assembly". The first general election of Vietnam has all 71 electoral districts, the number of delegates per electoral district is based on the population (Vu Van Nhiem, 2009). According to the National Assembly Election Law of 1959, the provincial electoral district and equivalent units such as the central city or the densely-populated industrial zone. Ten or more elected delegates can be divided into electoral districts. The number of delegates for each constituency is determined based on the number of people. Specifically, every 50,000 people has 1 delegate; if the

population is more than 2.5 thousand, one more delegate will be elected. In a central industrial zone and a central city, every 10,000 - 30,000 people shall have 1 delegate. The electoral district of the People's Council in this period was stipulated by the Decree No. 2004/SL dated July 20, 1957 on the election of People's Councils and People's Committees at all levels. The electoral district of the commune People's Council is inter-hamlet or inter-village. The constituency is the quarter and the commune in the towns; the commune in the districts; the district in provinces; quarter or inter-quarter in the cities and commune or inter-commune in suburbs. According to the 1980 National Assembly Election Law, the constituency is a province or city directly under the central government or equivalent level. However, large provinces and cities can be divided into many electoral districts. The number of election districts for the 7th National Assembly held in April 1991 was 93, with at least 4 delegates, at most 9 delegates. In the 8th National Assembly election held in August 1987, the number of electoral district increased to 167, each electoral district elected only 2 to 4 delegates. According to the 1992 National Assembly Election Law, each electoral district has no more than 3 representatives. The provinces and central cities may be one or divided into many electoral districts. According to the 1997 National Assembly Election Law and its amendments in 2001, the provinces and central cities are divided into electoral districts with no more than 3 representatives each; each province and central city has at least 3 delegates residing and working in the locality. The number of delegates is calculated according to the population and characteristics of each locality. The 2003 People's Council Election Law stipulates that each electoral district must not have more than 5 delegates. The 12th National Assembly election held April 25, 2007 has 876 candidates allocated to 182 electoral districts in 64 provinces and central cities to elect 500 delegates (Thai Vinh Thang, 2014). Each province and city has 5 - 36 delegates. Each small province or city has 2-3 electoral districts and each large province or city has 7-9 electoral districts. According to the 2015 People's Council and National Assembly Election Law (Law No. 85/2015/QH13), provinces and central cities are divided into National Assembly electoral districts. The number of electoral districts, the list of electoral districts and the number of votes shall be based on the number of people, determined by the National Election Council at the proposal of the Province/Central city Election Committee and published no later than 80 days before the election day (Clause 2, Article 10). Each National Assembly electoral district shall have no more than 3 delegates; each People's Council electoral district cannot elect more than 5 delegates (Clause 4, Article

10)³. The above regulation shows that Vietnam's current Election Law is not strict, which can lead to inequity among electoral districts. The 1946 Constitution stipulates that every 50,000 people has 1 representative. This provision will facilitate the establishment of electoral district and the number of delegates in each electoral district. Currently, Vietnam's population is estimated at 95 million people and the number of National Assembly delegates is stipulated no more than 500. If the maximum number of National Assembly delegates is 500, each delegate represents 190,000 people. If each electoral district has no more than 3 delegates, every 570,000 inhabitants is 1 constituency. Therefore, the establishment of constituencies will be based on the principle of 570,000 people per electoral district. Because it is not so clearly defined, in practice we have not ensured the equality of ballots. For example, in the 12th National Assembly election on May 20, 2007, the number of delegates assigned before the election was 500, Vietnam's population was statistically 83,119,900 people⁴ at that time. Thus, the average delegate rate is 166,240. Hanoi had 3,145,300 people at that time, elected 21 delegates, so on average every about 149,776 people had 1 National Assembly delegate. Ho Chi Minh City had 5,891,100 people, elected 26 delegates, so 1 delegate represented 226,581 people. Dak Nong had 397,500 people, elected 6 delegates, so 1 delegate represented 66,250 people. Thus, it can be seen that the value of the ballots in the electoral districts was not the same, especially the value of the ballots of Ho Chi Minh City people was only a quarter of that of Dak Nong people (Vu Van Nhiem, 2009).

Weaknesses in Establishing the Relationship between the National Assembly Delegates and Voters

The National Assembly is an people- elected body, so the National Assembly is a concentrated body that expresses the will of the people. For this objective, the National Assembly delegates must really be representatives of the people and understand the people's feelings and aspirations. A close relationship between the National Assembly delegates and voters must be established. In Vietnam today, some National Assembly delegates work at the central agencies but do not live and work in the locality, so there is no link between the National Assembly delegates and the local people. When central delegates who become local candidates often put voters into a "dilemmas". People often do not clearly understand and

³ See: National Assembly and People's Council Election Law, National Political Publishing House, 2016, p.13,15.

⁴ Data of the General Department of Statistics in 2016

have incomplete information about their representatives. If people do not vote for that candidate, they are afraid that it will be said that the locality does not trust the central government. Otherwise, they feel worry about the voted candidate whom they do not know.

Dependence and no real power of National Assembly

According to the 2013 Constitution, the National Assembly is the highest state authority; however, in many cases, the National Assembly is not the highest authority that decides matters under its functions. For example, in the adoption of the 2013 Constitution, in its draft, there was a discussion among the people that the Constitutional Council was the Constitution protection body; however, in its final draft, the Constitutional Council was removed because the Politburo has not agreed on the establishment of the Constitutional Council. Thus, the National Assembly cannot vote on a matter that the highest agency of the Communist Party disagree on. Clearly, the National Assembly is elected by the entire people, the highest legal representative body of the people but has no real power and cannot independently perform its Constitutional functions, which is a major shortcoming of the representative democracy in Vietnam.

Results and Conclusions

From the above analysis, we have some suggestions on solutions to innovate the representative democracy in Vietnam today:

- Supplement the principle of free election into the National Assembly and People's Council Election Law at all levels to ensure the candidacy freedom of citizens.
- Supplement the specific criteria for the National Assembly delegate candidacy, when candidates meet the criteria, they are included in the candidate list and not eliminated during the current negotiation process. Those criteria, in my opinion, are as follows: a) As of the election day, 21 years or older; b) Have a clean criminal record (no criminal record); c) Have 300 support signatures; d) Submit a nomination form on time; đ) Have a curriculum vitae certified by the ward (commune or town) People's Committee where the candidate lives; e) Have an election campaign.
- Change the constituency establishment way, specifically the entire country is divided into 500 electoral districts, each has only one delegate. With a population of 94.67

million people⁵, each constituency has 189,340 people. The number of people in the constituencies must be equal to ensure the value equality of ballots.

- Replace the negotiation system with a two-round election system, under which if no one has an absolute majority in the first round, two candidates with the highest number of votes will be selected in the second round.
- In addition to the curriculum vitae, all candidates must have an election campaign, which must clearly state the tasks beneficial to the people and the country that must be carried out by him/her after becoming a member of the National Assembly and his/her commitment to close to the people, demonstrating the people's aspiration and protecting the people's interests;
- In order to ensure the principle that all state power belongs to the people and the National Assembly is the highest authority of the state, it is necessary to stipulate that the National Assembly operates independently, is only responsible to the people and performs its functions for the benefits of the people, the prosperity of the nation and the people of Vietnam.
- In order for the National Assembly to successfully fulfill its three functions, which are legislation, decision on important issues of the country and supervision, it is necessary to build a new National Assembly. All National Assembly delegates must work full-time (in now time, only 40% of members of National Assembly work full- time), so all three functions can be fulfilled in a better way, especially the function of supervising the executive and judiciary agencies because the pluralism shall be terminated and a National Assembly delegate cannot simultaneously work for both legislation and legal execution or both legislation and justice.
- At present, the National Assembly controls the Government by listening to the Government's reports, questioning the Prime Minister, Deputy Prime Ministers and Government members, taking votes of confidence and giving votes of confidence to the Government members. However, the reality shows that many ministers are not worthy of their post. Many senior officials have been prosecuted for criminal liability or disciplined like Dinh La Thang, Nguyen Bac Son, Vu Huy Hoang, Nguyen Van Chien, Bui Van Thanh, Nguyen Viet Tan, Phan Huu Tuan, Vo Kim Cu, Nguyen Quoc

⁵ According to the data of General Department of Population and Family Planning (Population and Family Planning) under the Ministry of Health, Vietnam currently has 94,670,000 people (Source: <https://dantri.com.vn/suc-khoe-/dan-so-Viet-nam-dat-gan-95trieu-nguoi-dung-thu-14-cac-nuoc-dong-dan-nhat-the-gioi-20190119093910455.htm>) Accessed on May 20, 2019.

Khanh, Trinh Xuan Thanh, Le Dinh Nhuong, etc. This fact shows the signs of power corruption. The toleration for some officials who provide false CVs, Certificates of birth to meet age conditions to be elected as a senior official has negative impacts on the young officials. Projects for personal interests and group interests have brought about serious consequences. Formosa project has been still a threat to the Vietnamese environment until now. Currently, anyone who goes through Vung Ang area also has to look at the thick and black smoke covering the Vung Ang area, polluting a large space of land, airspace and sea. For the above reason, we hereby propose to add the provision that “if the Government has at least 3 ministers violating the law and being prosecuted for criminal liability, the National Assembly can vote against the Government to enforce the Government to dissolve” to the 2013 Constitution and the 2015 Law on Organization of the National Assembly.

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