

ENABLING BUSINESS ASSOCIATIONS' PARTICIPATION IN LEGISLATIVE PROCESS IN VIETNAM: PROGRESS AND CHALLENGES*

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More than three decades of the Doi Moi reformatory policies have unlocked potential for the development of the private sector and the voice of the business community in the agenda of economic modernization in Vietnam. The analysis of this paper proves that Vietnam has made significant progress in the legal framework to include business associations in law-making process. It, however, also argues that challenges and bottlenecks remain to be addressed so as to give substance to the participation of business associations.

Keywords

business associations, Vietnam, legislation, Doi Moi, state-owned enterprises, private sector

1. Introduction

Since 1986, a wide range of Doi Moi reformatory policies have unlocked the potential of the private sector in Vietnam. Since then, business has been booming. As a result, business associations have been blossoming as a way to network and act collectively in their sectarian interests. As Vietnam entered the global economy, rules and principles of good governance migrated into the country. Non-state actors, including business associations (formal and informal), international donors, foreign investors, the Vietnamese business community, and legal practitioners were not passive recipients of state law; they too were interacting with global ideas and pushing the regime for intensifying changes. This further opened up more space for the development of business associations and their participation in decision-making realm.

Business actors have always tended to act collectively to influence policy formulation and legislation. An association, as an entity promoting the interests of business members, provides them with a collective strength and appropriate tactics that they cannot have on their own when trying to influence decision-makers (Coleman et al. 1983, 268; McCord n.d., 7). The role of business associations is to represent and protect the interests of their members by developing a dialogue with government. Such interaction provides legislators with information about the views of business, which helps to strengthen the match between legislative outcomes and business needs (Pedersen et al. 2014, 199).

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This paper seeks to investigate the role of business associations in the law-making process in Vietnam. It comprises four sections. Section 2 introduces the course of development of business associations in Vietnam since the apex of communism, followed by the analysis of the regulations on the role of business associations at different stages in the legislative process in Section 3. The main argument is that business participation in lawmaking has been increasingly visible, especially on matters that directly impact their operation. This assertion will be tested through the case of the development of the Penal Code 2015. As Section 4 shows, challenges and bottlenecks remain to be addressed so as to give substance to business participation in the law-making process.

2. The development of business associations in Vietnam

The emergence of business associations in Vietnam can be traced back to the high-socialist period of 1950s and 1960s upon the issuance of the Order No.102/SL/L004 of May 1957 promulgating the Law on the right to establish associations. Mass organizations were promoted as two-way communication channels, serving as a forum for citizens to participate in policy making (Gillespie 2008). In 1960, the Council of Government endorsed the establishment of the Chamber of Commerce and Industry (“VCCI”). After 3 years of preparation, VCCI was officially granted the legal status of a business association with the task of promoting trade and investment between Vietnam and other countries (Ho 2012). Due to the legacy of the centrally-planned economy, most business associations in the early 1990s were established by the State and the members were state-owned enterprises. Such associations were led by a *lien hiep xi nghiep quoc doanh* (union of state-owned enterprises) or a *tong cong ty nha nuoc* (general state corporation).² Therefore, in the early stage, business associations in Vietnam were dependent on the State, given the entrenchment of centralized economic management by the Communist Party (the Party) and the State. As a result of the privatization process, the number of state-owned enterprises versus all types of enterprises has been declining over the years. Although they make up only 0.4% of the total number of enterprises, their share of industrial output contributes 20% to the country’s GDP (Dang et al. 2021). The interests of state-owned enterprises are thus given preferential consideration in enacting commercial legislation (Gillespie 2008). The enactment of the Enterprise Law 1999 marked a milestone in economic reform policies that facilitated the development of enterprises in private sector. Small and medium sized enterprises (“SMEs”) form the largest part of the private economic sector, and many of them associated and established their own associations for business

² According to the Decree No. 27-HDBT of 1989, there are two types of *lien hiep xi nghiep quoc doanh*: (i) a union formulated by several state-owned enterprises having close relationships on voluntary principle, and (ii) a union is formed in specific technical-economic sectors (such as electricity, railways, postal services) which have high level of capital accumulation, and operates according to plans and a centralized accounting regime. *Tong cong ty nha nuoc* consists of at least five state-owned enterprises operating in the same economic sector and is controlled by a central ministry or a provincial people’s committee. For example, Vietnam Leather, Footwear and Handbag Association (LEFASO) was established from a union of enterprises, and Vietnam Textile and Apparel Association (VITAS) was originated from a general state corporation.

activities. Given the proliferating number of associations by the late 1990s, the Decree No. 88/ND-CP providing for the organization, operation and management of associations was passed in 2003 with the attempt to reconcile the Party's desire for the socio-economic development promoted by associations with maintaining its leadership (Gillespie 2008). This document was then replaced by the Decree No. 45/2010/ND-CP of 2010, specifying in more detail the requirements and procedures for establishing associations and authorization in approving the establishment of associations. However, these provisions are criticized as being strict and limiting space for the right of association to be exercised (Nguyen 2016). Notably, SMEs constitute about 98% of businesses (General Statistics Office of Vietnam 2014), but, prior to 2010, they were unable to establish their own member-directed associations or sign up to industry trade groups (Gillespie 2008).³ It was not until November 2011 that the SME community gained approval from the Ministry of Home Affairs for the establishment of the Vietnam Association of Small and Medium Enterprises (“VINASME”) to represent their interests.

The foreign investment sector has been established since the introduction of the Law on Foreign Investment of 1987. Adopting the *chinh sach mo cua* (open-door policy) for the pro-active integration into regional and global economies, Vietnam has carried out various measures to attract foreign direct investment flows. As a result, the foreign investment sector experienced a rapid growth, with the output rising steeply from 26.5% in 1996 to 43% in 2004 (Bui 2005). In response to the development of foreign invested enterprises, the Government issued the Decree No. 08/1998/ND-CP of January 1998 on promulgating the regulation on the establishment of associations of foreign businesses. Accordingly, foreign businesses are allowed to establish associations or clubs of foreign business in Vietnam (Article 1). However, their operation is quite restricted, because each community of foreign businesses of the same nationality or originating from an international or regional organization operating in Vietnam shall establish only one association in Vietnam (Article 3). Moreover, foreign businesses (both joint-venture enterprises and wholly foreign-owned enterprises) shall be admitted as associate or honorary members of a Vietnamese business association, thus they do not have the right to vote, the right to elect and stand for election to the executive and inspection boards of the Vietnamese association (Article 17, Decree No. 45/2010/ND-CP).

So far, there are no official statistics on the number of business associations from state agencies. The number frequently mentioned in reports issued by the Ministry of Home Affairs, the ministry in charge of the management of associations, is more than 300 associations at national level and more than 2,150 associations at provincial level (EuroCham in Vietnam 2010). According to a representative from the Association of Vietnam Retailers (AVR), there are more than 600 business associations operating at national level in 2021 (Dinh T. M. L. 2021). Business associations in Vietnam can be categorized in different ways. By industry, there are two types, namely multi-industry associations, and industry trade associations. By territory-based scope of operation, there are nationwide and local associations. Most business associations are based in big

³ Instead, SMEs could enlist in broadly constituted business associations such as VCCI, and Union of Associations of Industry and Commerce (UAIC).

cities, of which Hanoi and Ho Chi Minh City are the home of more than 42% of total business associations of the country ((EuroCham in Vietnam 2010).

The above background suggests that the Vietnamese business community is fast-growing, diverse but fragmented, with a small number of foreign and state-owned enterprises at one end and large numbers of SMEs at the other. Given the growth and contribution of businesses in the private sector and the foreign investment sector, business associations have been gradually becoming independent from the State. Notably, state-owned enterprises have joined private-led associations in recent years, so that there are no business associations whose members are neither exclusively state-owned enterprises nor exclusively private enterprises (Nguyen et al. 2002). Business associations now act as intermediary organizations, which account to both business members and the government, instead of being passively subject to the political corporatist structures (Nguyen 2014). A study in 2015 indicated a better understanding of the voice of businesses in policy-making for the past years, as 43% of surveyed enterprises believed that business associations play an important or a very important role in this process (VCCI 2015). In addition, the status of VCCI is noteworthy. VCCI was originally established under the state model where its operation was controlled and funded by the Government. The strengths were that VCCI was provided sufficient financial resources, professional staff and little competition so as to fulfill its mandate to promote economic relations between Vietnam and the rest of the world. As the country adopted the market economy in early 1990s, VCCI gradually gained financial and operating autonomy, becoming a national agency representing and supporting the business community. Some observers believe that VCCI has been slowly dissociating from the Party and the State to serve as a member-directed organization (Stromseth 2003). According to the Decree No. 2177/QĐ-TTg of November 2016 approving the VCCI's charter, VCCI is a non-governmental and non-profit organization, which assembles and represents the business community, entrepreneurs, employers and business associations in Vietnam. VCCI is now the largest business association in Vietnam with about 200,000 member businesses and 220 member business associations (Kim Dung 2021). The renovation of state-sponsored business associations like VCCI has created better communication channels between businesses and public authorities, thereby raising the voice of the business community in the law-making process. Yet the operation of VCCI, as an association of specific characteristics, is guaranteed with state budget,⁴ and is required to conduct activities which are assigned or mandated by the State.⁵ Moreover, the role of VCCI is influenced by the Party and the State in term of leading personnel, because the VCCI Chairman is also the Secretary of the Party union of VCCI. Thus it is argued that VCCI is still similar to a state-corporatist body, which is more interested in instructing party-state policies than in advocating members' interests, especially small-sized enterprise members (Gillespie et al. 2009). The unique status of VCCI among business associations implies the nature of the participation of business associations in the legislative process in Vietnam, which will be discussed further in the following sections.

⁴ Article 3, Circular No. 133/2015/TT-BTC dated 31 August 2015 of the Ministry of Finance on guiding the financial management of the Vietnam Chamber of Commerce and Industry.

⁵ Article 6(18) Decision 2177/QĐ-TTg.

3. Business associations in legislative process

With the introduction of *Doi Moi*, Vietnam adopted the doctrine of “law-based state” (*nha nuoc phap quyen*), which has opened spaces for remarkable changes in the country’s political-legal landscape in the past three decades. The concept has become a constitutional doctrine since the 1992 Constitution (amended in 2001) after being renamed as “socialist law-based state” (*nha nuoc phap quyen xa hoi chu nghia*), portraying the socialist state of Vietnam as “a state of the people” rather than “a state of proletariat dictatorship”.⁶ Therefore, legislative process has become more democratic and publicly accessible (Gillespie 2008). The Vietnamese Government has promoted public participation in lawmaking as a means to ensure that laws reflect the common will of society (Nguyen 2001) and that laws are brought into real life (Thai Trung 2022). The legal framework for public participation in the law-making process has been gradually developed over the years. The Law on the Promulgation of Legal Normative Document 1996 established the procedure to collect public comment from those affected by draft legislation, giving the public a positive right in legislative making. Participating in the legislative process is now a constitutional right of Vietnamese citizens as provided under the Article 28 of the 2013 Constitution as follows:

1. Citizens have the right to participate in the management of the State and of society, and to discuss and propose to state agencies issues about their grassroot units, localities and the whole country.
2. The State shall facilitate citizens to participate in the management of the State and society; and shall publicly and transparently receive and respond to the opinions and petitions of citizens.

Such right is specified in the Law No. 80/2015/QH13 on Promulgation of Legal Normative Documents (Law No. 80/2015/QH13). The institutional changes and the introduction of business-government fora have contributed to the rising influence of business associations in lawmaking. Accordingly, business associations as the organizations representing the business community are entitled to participate in all stages of the legislative process, namely legislative initiative, legislative drafting, and legislative approval.

3.1 Legislative initiative

In Vietnam, the right of legislative initiative lies with the President, Committees and Council of the National Assembly, the Government, the People’s Supreme Court, the People’s Supreme Procuracy, State Audit Office, Central Committee of Vietnam Fatherland Front, and central agencies of member organizations of the Vietnam Fatherland Front (Article 32, the Law No. 80/2015/QH13). Legally, business associations that are members of the Vietnam Fatherland Front have the right to initiate legislation. However, initiating legislation in practice lies almost solely on the executive body, i.e. the Government. There were few cases where other actors, rather than the

⁶ Article 2, Constitution 1980.

Government, submitted legislative proposals to the National Assembly.⁷ VCCI, as a member of the Vietnam Fatherland Front, exercised the right of legislative initiative once when it proposed the law on household businesses in 2020 (Nguyen 2020). This practice suggests that business associations encounter several difficulties in exercising the right of legislative initiative. Firstly, they have been struggling to connect and establish a relationship with competent state agencies in order to present and submit initiatives, as opportunities to meet and have dialogue in person are very rare (Phan 2021). In addition, initiating legislation requires a lot of resources to conduct review reports on law implementation, which are beyond the capabilities of most business associations. Another challenge lies in the law enforcement. It is the characteristic of the Vietnamese legal system that an act becomes effective only when executive bodies issue legal documents guiding the implementation of such act. It is questionable whether business associations are in the position to request the Government to prepare guiding instruments for acts that they propose (Dau 2021).

Business associations are more likely to participate and contribute opinions during the drafting phase of legislative initiatives prepared by executive agencies. As prescribed by the law, institutions initiating legislation shall seek and collect opinions from relevant organizations and entities under the direct impact of the proposed legislation (Article 36, Law No. 80/2015/QH13). Apparently, the initiative is subject to be consulted with business associations if it is relevant to or directly impacts the activities of business communities. For further clarification, the Decree 34/2016/ND-CP of May 2016 on detailing and guiding the implementation of the Law No. 80/2015/QH13 provides that proposal-making agencies shall collect opinions of VCCI in case the proposal relates to rights and obligations of businesses (Article 10.4). *Lay y kien* (collection of opinions) has been used in the legislative process in Vietnam for decades, mostly in form of meetings, seminars or conferences. The Law on Promulgation of Legal Normative Documents adopted in 1996, 2004, 2008 and 2015 provides for the collection of people's opinion in the legislative process. It is noteworthy that lawmakers are given discretion to determine who are affected by the legislative initiative, thereby deciding whether it is necessary to collect opinions and how it is carried out. For the functioning of the *lay y kien* mechanism, transparency, first and foremost, the right to access to information must be guaranteed at certain level. The rapid development of information and communications technology helps promoting transparency in state governance in Vietnam, including the legislative process. As the Chairman of VCCI commented: "In recent years, increasing openness and transparency in legislative process has facilitated business associations to give opinions and critical comments on proposed policies" (Thanh Hai 2020).

3.2 Legislative drafting

At this stage, business associations are entitled to participate through the mechanism to collect opinions on draft legislation. The current legal framework provides for different

⁷Tran Thi Quoc Khanh, a member of National Assembly, proposed the law on public administration, but the proposal was then dismissed in National Assembly's session in September 2018; Vietnam Lawyers Association proposed the law on referendum.

channels for business associations to contribute their views and comments, particularly forums and meetings organized by drafting agencies (Article 55, Law No. 80/2015/QH13) and via the information portal of competent agencies as prescribed by laws (Article 57, Law No. 80/2015/QH13). In addition, drafting agencies are obliged to send dossiers of the draft of legislation concerning the rights and obligations of the business community to VCCI for its opinions (Article 25, Decree 34/2016/ND-CP). These provisions indicate that the collection of opinions is a compulsory step in the legislative drafting. It also creates a mechanism for the active involvement of businesses in developing legislation.

Another way for the participation of business associations in legislative drafting is to join drafting broad or editorial groups that assist the drafting board. The Law No. 80/2015/QH13 provides that the composition of drafting board and editorial groups includes members who are experts and scholars in the field concerned by the drafting legislation (Article 53 and Article 54). Therefore, representatives from business associations can be appointed by agencies in charge of legislative drafting to join the drafting board or editorial groups. This is a form of direct participation; accordingly, the views and opinions of the business associations are directly delivered to lawmakers through the activities of drafting boards and editorial groups. In practice, VCCI personnel have been appointed to be members of drafting boards several times, such as the drafting boards of the Law on Support for SMEs in 2017, the Law on Road Traffic (amended) and the Law on Cinematography (amended) in 2021. However, the participation of business associations is quite limited, because the selection of drafting board members is at the discretion of competent drafting agencies, and the operation of drafting boards and editorial groups is controlled by the ministries or agencies in charge (Le 2016).

3.3 Legislative approval

After being considered and approved by the Ethic Council and other Committees under the National Assembly (Article 63, Law No. 80/2015/QH13), the draft legislation is submitted to the National Assembly for review and debate whether it should be passed. The National Assembly shall discuss the main contents and major debate issues of the draft legislation at the plenary meetings.⁸ Business associations can influence the approval of the draft legislation through their representatives who are members of the National Assembly. At the plenary meetings, representatives from business associations have the opportunity to express the views and opinions of the business community on the concerned policy and legislation. This process may affect the decision of other members of the National Assembly. In addition, as the members of the legislature, representatives from business associations have the right to vote on the passage of the draft legislation. Over the years, representatives from business associations have been elected to the National Assembly. Mr. Vu Tien Loc, who served as the Chairman of VCCI for 18 years, has been a member of the National Assembly in 4 consecutive terms (from 2002 to 2021). Recently, the Chairman of VINASME, Mr. Nguyen Van Than,

⁸ Article 74.3, Law No. 80/2015/QH13.

won the election and started his second consecutive term (from 2021 to 2026) in the National Assembly.

Another participation method is the referendum, which is a means to exercise direct democracy. The referendum is useful to enhance institutional discipline on the behavior of elected bodies and representatives as it facilitates them to fully consider the voters' opinions in decision-making (Beramendi et al. 2008). After much debate and delay from time to time, the Law on Referendum was passed in November 2015 and came into effect in July 2016. This lays the ground for the active interest and involvement of citizens in public affairs. According to the Law, matters subjected to referendum, among others, are "extremely important" socio-economic issues which largely impact the national development (Article 6). In other words, if the concerned issue directly and seriously affects the economic development, it may be considered for a referendum. However, the right to referendum under the current law is restricted. First, the Law assigns full authority to the National Assembly to consider and decide on what matters are "extremely important" that need to use the referendum process. Second, citizens are not able to propose a referendum because such right is limited to the Standing Committee of the National Assembly, the President, the Government, or at least one-third of the total members of the National Assembly (Article 14). Apparently, the inherent loophole and lack of detail cause the invalidity of the Law on Referendum in practice (Ha et al. 2021). Within such a constrained space, what business associations can do are tactics to direct public opinion on the concerned policies through conducting research, conferences, media campaigning, or to access decision-makers or influential people who may affect the decision outcomes. The following case of the amendment of the just-enacted penal code helps to picture the advocacy activities of Vietnamese business associations in practice.

The Penal Code No. 100/2015/QH13 was adopted by the National Assembly in November 2015 and set to take effect on 1 July 2016. However, during the implementation of the Resolution No. 109/2015/QH13 on the effect of the Penal Code 2015, many technical errors and inapplicable provisions were revealed by concerned organizations and institutions. Particularly, the Article 292 on illegal online and telecommunication networks services stirred up controversy and objections from the business community. The Article stated that the provision of services via computer network or telecommunications network without prior permission would constitute a criminal offense. The local start-up businesses, who would be affected the most, initiated a petition calling for the scrapping of the Article 292. The petition, with about 6,000 signatures from the business community and individuals collected in only one week, was sent to the National Assembly Chairwoman and the Prime Minister (Yen Vy 2016). VCCI and VINASA (Vietnam Software & IT Services Association) also filed petitions to the Standing Committee of the National Assembly. In its petition, VCCI clearly stated that:

"The Article 292 severely affects online businesses in Vietnam as it criminalizes many offences that should be subjected to administrative sanctions...[It] is not suitable with doing business in IT sector, especially new services and start-ups" (Bach Duong 2016).

Accordingly, the National Assembly was forced to pass the Resolution No. 144/2016/QH13 on 29 June 2016 to postpone the effect of the Penal Code 2015 and to

amend technical errors and the content of certain Articles of the Code, including the Article 292. On 20 June 2017, the National Assembly voted to pass the revision of the Penal Code 215 with amendments related to 141 articles, including the removal of Article 292 (Bao Yen 2017). This case has demonstrated how the business community with the lead of business associations, especially major associations such as VCCI and VINASA, can unite and put pressure on legislators in case the legislation potentially infringes their interests. From the perspective of legislators, it highlights the importance of businesses' participation in making decisions related to business activities. As the Vice Chair-person of the National Assembly's Committee on Social Affairs, Mr. Do Manh Hung, admitted upon the controversy of the Penal Code 2015:

“From this [case], I realize that voters, experts and media reveal the mistakes. This, once again, indicates the important role of voters and public opinions in supervising the activities of the National Assembly, including legislative activities” (Chung Hoang, 2016).

4. Challenges

4.1 Insufficient framework for association

Since the *Doi Moi* (political and economic renovation) in 1986, the space for pluralistic social groups like business associations has been emerging outside the state (Hannah 2005). However, the current legal framework has not fully enabled the exercise of the freedom of association in accordance with international human rights treaties ratified by Vietnam. The Constitution 2013 provides the right to associate, yet allows restrictions of such right by *phap luat* (normative documents issued by executive bodies). In addition, the Civil Code 2015 imposes burdensome administrative procedures for the establishment and operation of non-commercial legal entities, which include, among others, social organizations and professional organizations (Article 76). Such provisions give the State broad competence to *quan ly* (manage) associations rather than facilitate freedom of association of citizens (Bui 2018). Freedom of association remains a politically sensitive issue in Vietnam, although discussions about an act on association have been stimulated since 1993. The first draft of the law on association was submitted to the National Assembly for discussion in 2006, but after 15 years Vietnam has not yet adopted the law. Therefore, business associations cannot reach their full potential in conducting activities, including participating in legislative process (T. M. L. Dinh 2021).

Another obstacle to business associations' autonomy is the provisions on access to finance. The ability to seek, access and receive funding and resources is vital for the operation of business associations. To truly represent the interests of their members, business associations should become financially independent, however, the current legal environment does not facilitate them to do so. The right of Vietnamese business associations to mobilize financial resources from international organizations is restricted by a cumbersome and complex process. To receive a grant from foreign organizations, associations must undergo a process of approval which includes a written approval of

the competent authorities.⁹ To go further, the draft law on association of October 2016 stipulates that associations must not affiliate with foreign associations or receive funding from abroad, except under special circumstances with permission from the Government. This proposal met strong opposition from experts, and was said to be an inconceivable and glaringly backward regulation (Viet Nam News 2016). This shows the State's reluctance to open up more political space for business associations in the formulation of state policy and law.

Foreign businesses and their associations have also encountered significant difficulties, because the law does not encourage foreign businesses to associate with Vietnamese businesses. Foreign businesses are only allowed to become associate or honorary members of a Vietnamese business association, who do not have the right to vote and to be elected to executive bodies of the association (Article 17 Decree No. 45/2010/ND-CP). Although businesses in the foreign direct investment sector now account for 2.8% of the total number of businesses and contribute nearly 20% to the GDP (Nguyen 2021), the legal framework has not sufficiently developed to ensure that their business interests are attended to in the legislative process in Vietnam. As an Executive Committee Member of EuroCham commented:

“I think foreign businesses want to be treated the same as Vietnamese businesses. During my work at EuroCham, we are not able to become official members. It is not until we have full membership rights that we will develop closer and stronger link with Vietnamese members” (Pijl 2021).

4.2 Ineffectiveness of participation

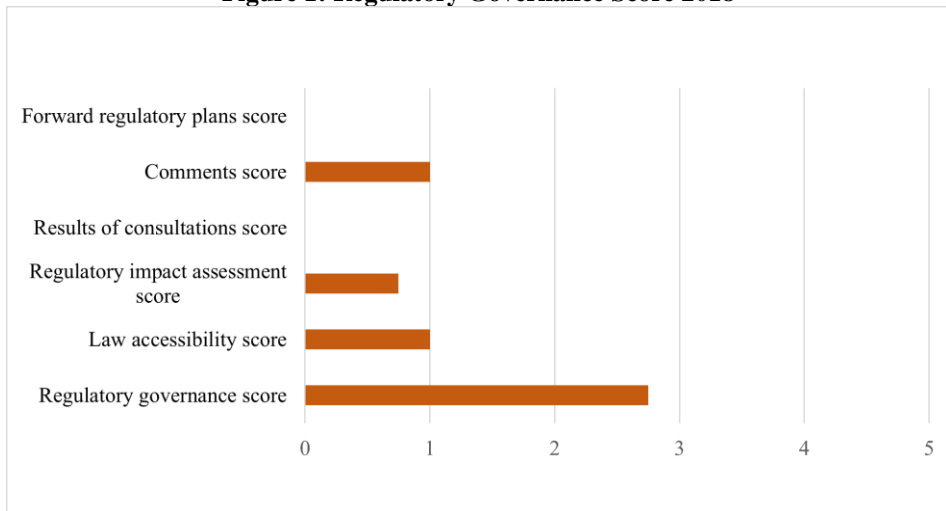
The practice in Vietnam shows that business associations participate in the legislative process mainly through the mechanism of collecting opinions by competent state agencies. However, unlike public consultation, the collection of opinion does not constitute a meaningful participation by business associations, and by the public in general, in the legislative process (Le 2016). Public consultation is often defined as a two-way communication process, or two-way flow of information between citizens and state authorities at any stage of regulatory development (Rodrigo et al. n.d.). Public consultation is thus a process that involves public inputs in law-making (Le 2016). Professor Le Hong Hanh (2016) points out the mere formality and ineffectiveness of the collection of opinions in comparison with public consultation as follows: (i) it is simply used to gauge public opinions on specific draft legislation rather than aim to consult with the targeted groups for their wishes; (ii) it is merely an act of gathering information from the public and does not require drafters' accountability on how the collected opinions are handled; and (iii) it is conducted quite arbitrarily by drafters in terms of method, scope and content. The controversy of the Penal Code 2015 is not an exceptional case that indicates how ineffective the collection of opinions is as the main mechanism for the public participation in legislative process.¹⁰

⁹ Decree No. 80/2020/ND-CP of the Government of July 8, 2020 issuing regulations on management and use of foreign non-governmental aid.

¹⁰ For more detail on other cases such as the drafting of the Law on Enterprises, the Law on Social Insurance, and the Law on Investment. See Le, H. H. (2016). *Public Participation in the Legislative Process in Vietnam and the Concept of Public Consultation*. 17(2), 18.

In addition, the effectiveness of business associations' participation in the legislative process is discouraged due to the low level of transparency (see Figure 1). Draft agencies are obliged to ask VCCI's opinions on legislative initiatives and legislation drafts related to the rights and obligations of business community (Article 10 and Article 25, Decree 34/2016/ND-CP). However, the law says nothing about their obligation to inform and explain to VCCI which and why its recommendations are incorporated in the draft or rejected. Commenting on the transparency of the legislative process, the VCCI leader points out three shortcomings: (i) the collection of opinions is not friendly as the full text of draft legislations is posted on websites without analysis and explanation of changes; (ii) lawmakers have not seriously performed the duty to explain how opinions of business associations are handled; (iii) impact assessment of policies related to businesses have not conducted properly (Bao Yen 2021). Therefore, businesses have a distrust of their participation and contribution in the law-making process. A study reveals that a majority, 56% of the interviewed business associations, have never conducted policy advocacy activities to participate in process of developing laws and policies, and only 38% of the interviewed business associations believe that such activities are effective (Dau et al. 2012).

Figure 1: Regulatory Governance Score 2018



Source: World Bank (n.d.)

The case of amending the 2015 Penal Code is a good example to question the effectiveness of the public participation in general, and the participation of business associations in particular in Vietnam's legislative process. The legislation was passed after completing all requirements of the lawmaking procedures, including the collection of opinions through thousands of meetings, workshops and conferences and via websites of governmental agencies (Le 2016). As reported, more than 3 million opinions and comments on the draft of the Code were collected during a 2 month period

(Thanh Dat 2015). However, it was unclear how the drafting agency took into account these opinions while developing the draft, so that the enacted version contained hundreds of inadequacies and caused a strong opposition from the business community. The second problem is why these mistakes were detected only when it was all done, i.e. the Code was passed by the legislature. This raises a doubt about how the participation of businesses throughout the legislative initiative is guaranteed. The concerned business sectors might have not been informed of the initiated policies related to their activities, thus there was no debate about these issues in the first stage of the legislative process.

4.3 Uneven playing field among business associations

As indicated above, VCCI is the largest business association and has a unique status among business associations in Vietnam. VCCI is legally recognized as an association of specific characteristics that is guaranteed with state budget¹¹ and personnel for its operation.¹² Moreover, the Resolution No. 09-NQ/TW of the Party's Politburo on Building and promoting the role of Vietnamese entrepreneurs in the period of industrialization, modernization and international integration affirms that VCCI is a socio-political and professional organization of the business community, business associations, entrepreneurs and employers in Vietnam. VCCI has received resources from the State for its development as an organization representing the interests of the business community. Such supports might be necessary to gather businesses in the context of a weak and fragmented business community at the early development stage. On the other side of the coin, this implies a discrimination among business associations, thus affecting their capacities to participate in the legislative process. With support from the State, VCCI has a large number of professional staff and is endowed with resources to finance its activities with the business community. Whereas, other member-directed business associations are subject to self-financing and non-profit principle,¹³ thus lack resources for an effective operation. A survey in 2012 showed that only 35% of the total interviewed business associations had a specialized legal unit, and many of them were hard up for facilities, especially offices and office equipment (Dau et al. 2012). This long-existing practice is creating an uneven playing field among business associations and in the long term does little help to facilitate their meaningful participation in legislative process (Tenev et al. 2003). Also, continuing to receive financial support from the State, VCCI is still considered as an extension of the State, thus raising doubts whether it represents the views of businesses to lawmakers.

The political statement about the role of VCCI as a socio-political and professional organization representing the business community, business associations and entrepreneurs also causes a fiery debate between VCCI and VINASME over which association should take the main responsibility for SMEs during the drafting of the law on support for SMEs in 2017. In the draft version submitted to the National Assembly,

¹¹ Article 8 of Law on State Budget 2015 provide that State budget shall supports performance of tasks given by the State as prescribed by the government for socio-political - professional organizations.

¹² Following Article 33 of Decree 45/2010/ND-CP; Prime Minister enacted Decision 68/2010/QĐ-TTg dated 01/11/2010 on list of associations of specific characteristics, and Decision 71/2011/QĐ-TTg dated 20/12/2011 on state budget guarantee and support for associations of specific characteristics.

¹³ Article 3, Decree 45/2010/ND-CP.

the Article 30 stipulated for VINASME six groups of tasks relating to supporting SMEs. The VCCI's leader took a position against this provision and said that it was contrary to the role of VCCI to represent the Vietnamese business community and entrepreneurs as envisaged by the Party and the State (Bao Tran 2017). Therefore, VCCI proposed to amend the provision to "VCCI and business associations have the following responsibilities..." without mentioning VINASME. The Chairman of VINASME, however, argued that VINASME represented SME interests and that it was a member of VCCI for 10 years but "saw no results [for SMEs]" (Bao Tran 2017). The heated debate prompted the National Assembly's Deputy Chairman to ask the drafting agency and the Committee on Economic Affairs to review the controversial article. On 14 June 2017, the National Assembly passed the Law on Support for SMEs with the removal of both VCCI and VINASME in the article on responsibilities of social organizations and socio-professional organizations to support SMEs. This case demonstrates that discriminatory treatment from the State may cause tension between associations over their role to represent business interests. Also, every association should be equal before the law, even though some might be politically favorable.

5. Conclusion

Business associations in Vietnam have increasingly asserted their part in the making of law, an area which was seen as exclusive to the State in the past. With practical inputs, business associations have contributed greatly to the development of a comprehensive legal system that has direct impacts on their operation. As argued above, this change was associated with the reformatory efforts since Doi Moi, opening up more space for business to voice up on governance matters related to their interests. The legal framework for such participation has been developed over time. However, challenges remain with regards to the legal basis for associations, their independence and effectiveness in law-making. This would require bolder reformatory efforts from leaders in order to give stronger voice to business associations in the legislative process.

First and foremost, a legal framework should be developed to facilitate the full exercise of the right to freedom of association. Nearly two decades of drafting are testimony to the arduous journey towards a law on association in Vietnam, but in the meantime certain provisions could be improved to allow room for business participation in the formulation of the law. In particular, administrative procedures for setting up business associations and mobilising foreign funds for their operation should be eased. Another solution is to ensure the effective participation of business associations by increasing transparency in the legislative initiative and drafting processes. Transparency has two aspects: (i) the right of business associations to access information at all stages of the legislative process; and (ii) the accountability of drafting bodies in response to the opinions submitted by business associations. Finally, it is necessary to reduce the political influence on business associations so that they are truly member-driven organisations, representing and protecting the interests of their members in the legislative process.

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