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THE CONSTITUTIONAL BASIS AND CONSTITUTIONALITY OF ADMINISTRATIVE UNIT MERGER IN VIETNAM AND A CASE STUDY OF HO CHI MINH CITY

Vu The Hoai

Saigon University (SGU)
273 An Duong Vuong Street, Cho Quan Ward, Ho Chi Minh City
Email: hoaivt@sgu.edu.vn; ORCID iD: 0009-0005-6312-8225.

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Corresponding Author: Vu The Hoai
(hoaivt@sgu.edu.vn)

ABSTRACT

Establishing the constitutional basis to ensure the legitimacy and sustainable stability of the structure of state power in local areas is essential and important to control the power, protect democratic rights, and optimize the effectiveness of national governance in the process of streamlining the administrative apparatus. The article analyzes the constitutional basis and evaluates the constitutionality of merging the administrative units in Vietnam in the context of organizational reform and innovation in national governance. Based on qualitative research methods, combining document analysis and legal interpretation, this study systematizes constitutional principles such as territorial unity, the rule of law, and the guarantee of human rights, at the same time, it also develops criteria for evaluating constitutionality in terms of jurisdiction, procedure, and content. The results show that current laws are compatible with the Constitution, but gaps still exist in special urban areas like Ho Chi Minh City, particularly in the decentralization and control of power. The study also clarifies the challenges of the "post-merger" period and the risk of institutional mismatch in the context of megacity formation, thereby suggesting directions for improving legislation towards adaptation and effectiveness.

KEYWORDS: Constitutional, Constitutionality, Administrative Merger, Municipal Government, Control Power.

INTRODUCTION

In the context of organizational reform and innovation in national governance in Vietnam today, reorganizing and merging the administrative units have become an inevitable trend, closely linked to the requirement of streamlining the administrative apparatus and improving the effectiveness and efficiency of state management. It's not only a problem of administrative procedures, but also a matter of profound constitutional significance, directly related to the organization of state power, the guarantee of human rights and civil rights, and the maintenance of the stability of the national territorial structure. Therefore, studying the constitutional basis and evaluating the constitutionality of administrative unit merger has an important theoretical and practical significance in the current period. The 2013 Constitution, as the fundamental law of the State, established the basic principles regarding territorial organization, the delineation of authority among state agencies, and the guarantee of the people's right to self-governance. On that basis, reorganizing the administrative boundaries, including merging, should be placed within the framework of constitutional principles such as territorial unity, the rule of law, and the requirement to ensure the effectiveness and efficiency of state administration. However, in practice, there are numerous problems related to compliance with procedures, as well as the impact of the merger on socio-economic life and the rights of the people. From that aspect, the article focuses on analyzing the constitutional basis of merging administrative units in Vietnam, at the same time, it also evaluates the constitutionality of this operation in both formal and substantive aspects. Based on the case study of Ho Chi Minh City, which is a typical place with the model of specific urban administrative organization, the article contributes to clarifying the matters that both theoretical and practical are facing, thereby it proposes improval directions in the coming period.

RESEARCH METHOD

This study is conducted following a qualitative methodology to analyze and explain the constitutional basis and constitutionality of administrative unit mergers in Vietnam. The research subject includes constitutional norms, relevant legal documents, and the practice of reorganizing administrative units, with a focus on the case study of Ho Chi Minh City. The research design is based on document analysis and legal interpretation. Data are collected from official sources, including the 2013

Constitution, the Law on Organization of Local Government, and resolutions of the National Assembly and the Standing Committee of the National Assembly on administrative unit reorganization, along with reports and practical documents from Ho Chi Minh City. Moreover, the study refers to relevant scientific works selectively with the aim of enhancing the depth of analysis. The research process has 3 steps: (i) systematize relevant legal regulations and constitutional principles; (ii) analyze the content and evaluate its constitutionality based on criteria of authority, procedure, and impact of the right; (iii) compare with the practice in Ho Chi Minh City to draw conclusions and generalize.

RESEARCH RESULT

The first is systematizing the constitutional basis and the principles of constitutionality in administrative unit merger.

From the research result, the constitutional basis of merging administrative units in Vietnam is established on a relatively complete foundation, which clearly reflects the characteristics of the socialist rule of law state model. The 2013 Constitution not only directly stipulates the authority of state agencies in deciding on the establishment, dissolution, merger, and division of administrative units, but also establishes guiding principles for all activities related to the organization of national territory. Firstly, the principle of unity and territorial integrity plays the role of a fundamental constitutional foundation. This principle affirms the supreme authority of the State in organizing and adjusting administrative units to ensure unified management throughout the entire territory. On this aspect, the merger is not only a right, but also is a responsibility of the State in optimizing the administrative structure to make it suitable with the requirements of development. Secondly, the principle of the socialist rule of law requires that all merger operations must be carried out on the law basis, strictly adhering to regulations on authority, procedures, and formalities. This creates a legal framework to control state power and prevent arbitrary adjustments to administrative boundaries. Thirdly, the principle of guaranteeing human rights and civil rights is expressed as an important criterion for evaluating constitutionality. Merging administrative units must not diminish access to public services, the right of citizens to participate in state management, or socio-cultural rights associated with the local community. From the above constitutional principles, the study has systematized

the criteria for evaluating constitutionality into three basic groups:

- **Criterion of authority:** requires that the merger must be decided by a constitutionally authorized agency (National Assembly or Standing Committee of the National Assembly).
- **Criterion of procedure:** includes the steps such as project development, public consultation, evaluation, and approval according to regulations.
- **Criterion of content:** evaluates the impact of the merger on human rights, the effectiveness of management, and social stability.

This result shows that the constitutionality of the merger is not merely a formality but also requires a comprehensive evaluation of its content and practical consequences.

The second is the compatibility between specialized laws and the practices of special-type urban areas.

Based on the analysis of specialized law documents, especially the Law on Organization of Local Government and resolutions on the reorganization of administrative units, the study finds a relatively high compatibility between the legal regulations and constitutional principles. The current regulations have quite fully specified the requirements regarding authority, criteria, procedures, and conditions for mergers. For a special city like Ho Chi Minh City, the law also has specific adjustments to meet the characteristics of its large population size, high density, diverse economic structure, and complex governance requirements. Allowing the pilot implementation of the “urban government” model is a testament to the flexibility of the legal system in adapting to practical realities. However, the research results also revealed some significant inconsistencies. Firstly, the legal framework remains highly homogeneous and does not fully reflect the differences between various types of administrative units, especially between urban and rural areas. The current merger criteria are mostly based on the scale of population and size, while they still do not pay sufficient attention to the urban function, the level of socio-economic development, and urban spatial characteristics. Secondly, the current mechanisms of decentralization and delegation of power are not commensurate with the requirements of modern urban governance. In Ho Chi Minh City, despite the progress in decentralization, the concentration of power at the top level still exists, which leads to limiting the initiative and flexibility of local

governments. Thirdly, designing the administrative organization after merging is not yet truly optimal. The formation of larger administrative units has not always been accompanied by corresponding improvements in governance capacity, resources, and operational mechanisms, leading to the risk of administrative overload. Therefore, although the principles and specialized laws are compatible with the Constitution, certain gaps still exist in special urban areas that need further adjustment and improvement.

The third is the effectiveness of implementation and legal barriers in the “urban government” model.

From the results of researching the practice in Ho Chi Minh City, implementing the “urban government” model and merging administrative units have achieved some positive results. Firstly, this model contributes to increasing focus and unity in management, reduces intermediate layers, thereby shortening the decision-making process and improving operational efficiency. Secondly, the merger helps optimize resources, especially human and financial resources, by reducing the number of organizational units and staff. This aligns with the goals of administrative renovation and streamlining the apparatus. Thirdly, the urban government model creates an advantageous condition to promote innovation in governance, moving towards modern management methods, applying information technology, and improving the quality of public service. However, alongside the positive results, the study also points out numerous legal barriers and challenges in the operational process: (i) the situation of overlapping and unclear authority between different levels of government still persists. This is due to the fact that the legal system has not been adjusted to suit the new organizational model, leading to difficulties in enforcement. (ii) The mechanism of power control is inadequate. The absence of People’s Councils at some levels in the urban government model raises issues of supervision and representation, leading to partially undermining the power control from the people. (iii) It is the limitation in guaranteeing the right of citizens to participate. As administrative units become larger, the gap between the government and the people tends to widen, affecting their ability to directly participate in the process of state management. (iv) The burden of administrative transformation after the merger, including adjusting records, documents, databases, and reorganizing the apparatus, creates high social costs in the short term. In summary,

although the “urban government” model and the merger of administrative units have made significant progress in organization and governance, further improvements to the legal framework are still needed, especially mechanisms to ensure the constitutionality of content to balance effective governance and the protection of human rights and civil rights in the context of rapid urbanization.

The fourth is the matter of “post-merger”: Changing governance in a megacity context.

Based on the research result, one of the prominent challenges after the merger is not the decision of reorganizing administrative units, but rather changing governance for an administrative and economic entity with a significantly larger scale. For a hypothetical example, merging Ho Chi Minh City with Binh Duong and Ba Ria-Vung Tau shows the potential for the formation of a “megacity” with the largest budget, population, and concentration of power in the country. In that context, the core issue is not only the management efficiency, but also designing control mechanisms that are compatible with the new scale. From the constitutional aspect, the mechanism for controlling state power in Vietnam is designed according to the principle of division of labor, coordination, and control among the legislative, executive, and judicial branches. However, at the local level, especially the “urban government” model, the institution of power control tends to shrink, with a typical example by the absence of People’s Councils at some levels. Once the scale of administrative units increases dramatically, this shrinking can lead to an accountability gap, increasing the risk of power concentration without adequate oversight mechanisms. The question is: is the current legal framework sufficient to regulate an administrative entity of such scale and nature? From the analysis result, the current legal system is still mainly designed based on the model of traditional administrative units, with assumptions of a lower scale and complexity. Therefore, when it is applied to a “megacity”, an “institutional mismatch” may occur, which means the legal framework is no longer compatible with governance practices. One specific manifestation of this mismatch is the hierarchical and decentralized mechanisms that lack sufficient depth and flexibility. In an expansive urban space, maintaining a mechanism of centralized management can reduce the ability to respond quickly and appropriately to specific functional areas. Conversely, if decentralization is not accompanied by effective control mechanisms, the risk of power dispersion and a lack of unity in

management can also arise. This shows the urgent demand to redesign the decentralization model with a multi-tiered, flexible approach while still ensuring tight control. Moreover, the matter of democratic oversight and citizen participation becomes especially important in the post-merger context. When geographical and administrative distances between the government and citizens increase, traditional participations may become less effective. This requires development in new monitoring mechanisms, including applying digital technology, enhancing information transparency, and establishing intermediary institutions to ensure that the rights of the people are not diminished during the process of administrative restructuring. Moreover, changing governance also involves the ability to synchronize legal and policy systems. In some localities, mergers can lead to differences in regulations, planning, and management standards, that requiring a process of complex and lengthy harmonization. If this matter is not handled effectively, it could lead to legal conflicts and hinder the administrative operations. From the above analysis, it can be concluded that the largest challenge of the “post-merger” period is not only reorganizing the administrative apparatus, but also redesigning the governance system to suit the new scale and nature of the administrative unit. This requires a shift from the thinking of traditional administrative management to modern urban governance, with a focus on balancing management efficiency and power control, centralization and decentralization, as well as economic development and human rights protection.

DISCUSSION

From the research results mentioned, analyzing the constitutional basis and the constitutionality of administrative unit merger goes beyond simply confirming the legality of a policy. It also contributes to clarifying the limits and adaptability of the constitutional framework in the context of changing state structures. The important significance of these results is in shifting the approach from “formal constitutionality” to “substantive constitutionality”, thereby expanding the scope of evaluation from purely legal aspects to governance, human rights, and policy effectiveness. For the theoretical significance, the study contributes to a better understanding of constitutionality in a unitary state that tends to be strongly differentiated in terms of spatial development. While the 2013 Constitution creates a relatively flexible legal framework for the reorganization of administrative units, its application

into practice requires a dynamic interpretation. This is especially significant in the context of the formation of megacities, where the scale and nature of governance exceed the initial assumptions of the legal system. Therefore, the study has pointed out that constitutionality is not a static state, but a continuous process that is re-established through legal practice and interpretation. For the practical significance, the research results provide a basis to evaluate more comprehensively the policies of the current administrative unit merger. Verifying the gap between legal regulations and practical cities especially shows an essential requirement to adjust the legal framework following the direction of a clearer distinction between types of administrative units, at the same time enhancing the flexibility in designing constitutions. Especially, analysis in the matter of “post-merger” has raised a requirement of restructuring power control mechanisms and ensuring the participation of people in the context that the administrative scale is expanding more and more. When comparing with previous studies, a lot of notable similarities and differences can be found. Most previous studies in Vietnam have focused mainly on administrative efficiency and streamlining, and considered administrative unit merger as a technical tool to reduce costs and improve management performance. Many recent studies at the first step approach this matter from a legal aspect, but they still tend to focus on analyzing legal regulations without delving deeply into the constitutional aspect. Meanwhile, international studies on urban consolidation emphasize the factors such as multi-level governance, accountability, and community participation. Compared to these approaches, the highlight of this study is that it places the issue of merger in direct relation to constitutionality, while also connecting constitutional theory and urban governance practice.

However, the study also shares similarities with international works in emphasizing the risks of power concentration and the need to design appropriate control mechanisms when the scale of administration increases. This proves that the issues raised in the Vietnamese context are not entirely isolated, but have a certain universality in the process of modern urban development. Besides the contributions mentioned above, the study also has some limitations, such as using a qualitative research method and primarily relying on document analysis. The study has not had the opportunity to thoroughly verify the conclusions through empirical data, especially data on the social impact of the merger. The research scale mainly focuses on the case study of Ho Chi Minh City, so the level of

generalization to other localities, especially rural or mountainous areas, is limited. The study has just analyzed the legal and institutional framework, without delving into non-legal factors such as governance culture, staff capacity, or socio-political factors, which significantly influence implementation effectiveness. From these limitations, the article could suggest several directions for further research, such as focusing on a more comprehensive evaluation of the impact of administrative unit merger on citizens, businesses, and the governance system. Further research into the mechanisms of power control in megacities, including the role of digital technology and new oversight mechanisms, will be an important significance in the context of digital transformation and smart cities.

CONCLUSION

Based on analyzing the constitutional basis, the constitutionality, and the practice of implementing the administrative unit merger, the study affirms that Vietnam currently has a relatively complete legal framework to implement the process of territorial restructuring following development requirements. However, the most significant contribution of this study is not in reaffirming the legitimacy of the policy, but in clarifying the need for a substantive approach to constitutionalism, linked to the guarantee of human rights, effective governance, and the legitimacy of state power. Throughout systemizing the constitutional principles and criteria for evaluating the constitutionality, the study has pointed out that merging administrative units should be considered as a process of restructuring institutions, instead of purely administrative adjustment. Especially in the context of the formation of large-scale urban areas like Ho Chi Minh City and the assumption of a “megacity”, the study has highlighted the risk of a mismatch between the current legal framework and governance practices, thereby highlighting the urgent need for institutional design innovation, especially in the mechanisms of decentralization and control of power. Furthermore, the study contributes to connecting constitutional theory and urban governance practice, clarifying the role of the “post-merger” period as a central space for reform, where policy effectiveness and constitutionality are substantively tested. Therefore, the study suggests directions for improving legislation towards flexibility, adaptability, and ensuring a balance between effective governance and the protection of human rights. For overall view, the core contribution of this article is to provide a systematic and multi-faceted approach to the issue of

administrative unit merger, thereby also contributing to supplementing the theoretical and practical basis

for the process of perfecting the socialist rule of law in Vietnam in the new era.

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