

A Comparative Study on the Concept of Accountability Between Vietnam and Japan

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ABSTRACT

This paper aims to describe the civil servant reform process in Vietnam. Also, the government concentrated on accountability of the public administration aligning with the civil servant system's development. With the specialty of the socialist country, the concept and characteristics of accountability have contained uniqueness, especially in the Japanese paradigm. Thus, this paper will investigate accountability from the perspective of civil servants' duties in Vietnam. In the comparative legal study, the research also refers to Japanese experiences. Some legal problems of accountability related to the civil servant law scheme will be pointed out to understand further obstacles of Vietnam in public administration reform over twenty years.

Keywords: Accountability; Civil servants; Vietnam; Japan

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1. Introduction

Vietnam's civil service has a history of over seventy years since the Democratic Republic of Vietnam was born on September 2, 1945. Since 1991, the government has started public administration reforms and developed the civil servant system and the economic renovation towards a socialist market-oriented economy. In the context of globalization, Vietnam has carried out administrative reform more than past twenty years, with the goals of 'building a democratic, strong, clean, professionalized, modernized, and efficient public administration in line with the principles of the socialist ruled-by-law state under the Party's leadership.'¹

¹ Government of Vietnam, 'Resolution No 30c/NQ-CP on Promulgating the Master Program on the State Administration Reform in the period of 2011-2020 [Nghị quyết 30c/NQ-CP Chương trình tổng thể cải cách



Notably, improving the government's accountability is one of the critical contents for developing a tectonic government. In other words, the Vietnamese government is trying to transform itself from governing to serving the community.

Vietnam's national administration has faced intense pressure in the context of international economic integration. An efficient administrative system becomes a vital factor in national competitiveness, determining the country's development. However, according to the Vietnam 2035 Overview Report, accountability is the weakest point of the Vietnamese government. The People's Voice Index and the government's accountability in Vietnam are still at the bottom of the ten lowest countries, and this ranking has tended to decrease since 1996.²

In recent years, accountability has mainly been mentioned in Vietnam when promoting foreign investment attraction. The public administration's requirements for openness, transparency, and efficiency have attracted the Vietnamese government's and scholars' attention to studying accountability. Therefore, this paper analyzes the legal framework and concept of accountability in Vietnam from a comparative legal perspective with Japan. Also, some issues might be identified for the legal improvement of accountability in the Vietnamese government.

2. The Concept of Accountability in Japan

The term accountability in Japan appeared in the mid-1990s, earlier than in Vietnam.³ Japan's economy and politics have followed capitalism for a long time, so it strongly requires democracy and transparency in public administration. Therefore, many laws related to administrative reform were born during the mid-1990s, which emphasized procedures of state activities to ensure publicity, transparency, and the people's participation.

2.1 Legal Sources for Accountability in Japan

The legal system of Japan has various laws stipulating accountability. The accountability-related legal schemes focus on explaining and providing administrative information about the state organs' performance. Administrative Information Disclosure Act (1999, 2001) is directly regulating accountability. In the article 'Accountability of administration' in Japan after the mid-1990s', accountability is mainly examined from the perspective of the information disclosure act, then leans on the right of people to request the disclosure of administrative documents and administrative transparency. Other laws followed The

hành chính nhà nước]' (2011).

² World Bank, 'Vietnam 2035: Toward Prosperity, Creativity, Equity, and Democracy (Vol 2): Main Report' (2016) <<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/996421479825859721/main-report>>.

³ Narufumi Kadomatsu, 'Accountability of Administration in Japan after the Mid-1990s' (2011) 16 Journal of Japanese Law 5 <<https://www.zjapanr.de/index.php/zjapanr/article/view/95>>.

Incorporated Administrative Agencies, Information Disclosure Act (2001), Government Policy Evaluation Act (2001), Public Records Management Act (2009), the Public Comment Procedure (1999), and an amendment of the Administrative Procedure Act (2005). All these laws control the state organs' activities, ensuring a democratic process through procedures to produce public administrative information.

2.2 The Concept of 'Accountability' in Japan

In Japan, 'Setsumei sekinin' is translated as 'duty to explain.'⁴ 'Accountability' refers to 'the principle of sovereignty of the people' and guarantees a concrete citizen's right to request disclosure of administrative documents. The Administrative Information Disclosure Act is to perform 'the duty of government to explain its activities to the people'.⁵ This provision enshrines 'the principle of sovereignty of the people.' To implement this right, the people can request the state organs to disclose information limited to administrative documents.

Concerning the Administrative Information Disclosure Act 1999, the concept of accountability is introduced in Article 1, which specifies the people's right to know the state administrative information. Non-disclosure information stipulated by laws shall limit which data to be disclosed. Article 2 of the Administrative Information Disclosure Act determines the information within administrative documents enacted by the national administrative agencies. Hence, this law indirectly protects 'the right of access to administrative documents' of the people.⁶

Regarding the legal scheme of administrative procedures, the Administrative Procedure Act of 2005 aims to ensure transparency in administrative activities. Thereupon, the Administrative Procedure Act initiated the concept of transparency by establishing duties to provide information when citizens request (opposite to the mandatory information provision system). Following this line of thought, Article 1 of the Administrative Procedure Act states, 'clarity in the public understanding of the contents and processes of administrative determinations.'

Besides, the Public Comment Procedure of 1999 regulates the state organs' duties to respond to citizens' comments in policy-making. This process shows two points: the people's political rights and the state's obligations to give feedback. The people can engage the country's policies by submitting comments in making policies or laws. In other words, this procedure is closed to the 'duty to explain.' Public Comment Procedure allows the participation of citizens engaging in policy-making of the state minimally. In doing so, democracy will be implemented, and the people's comments could be a vital source for accessing and amending the administrative orders afterward. Public Comment Procedure,

⁴ Kadomatsu (n 3).

⁵ Japan, Administrative Information Disclosure Act, art 1.

⁶ Narufumi Kadomatsu and Joel Rheuben, 'Japanese Information Disclosure Law' in Hermann-Josef Blanke and Ricardo Perlingeiro (eds), *The Right of Access to Public Information: An International Comparative Legal Survey* (Springer Berlin Heidelberg 2018) <https://doi.org/10.1007/978-3-662-55554-5_12>.

Government Policy Evaluations Act, and Public Records Management Act reflect the state's duties in policy-making when the evaluation is needed to ensure democracy.

3. Understandings of Accountability in Vietnam, Focusing on Civil Servant Laws

Regarding accountability, most studies will address categories of administrative procedures, publicity, and transparency in public-duty activities. However, this section will analyze the accountability concept in Vietnam from the perspective of civil servant laws. Whether from the standpoint of administrative procedures or the responsibilities of officials, these aspects are part of the overall state administrative activities. Therefore, the paper might bring a meaningful comparison to examine similarities and differences in the concept of accountability in Vietnam and Japan.

3.1. Legal Concept of Accountability

Followed by legal schemes for accountability, the research provides the concept of accountability in Vietnam as follows: Accountability is the responsibility of the state organs and civil servants in exercising public duties to explain and provide administrative information within their authorities when requested by horizontal and vertical supervisors or citizens. Accountability aims to ensure transparency in the state organs and civil servants' activities and protect the legitimate rights and interests of concerned organizations and individuals. The definition of accountability in Vietnamese laws is fundamentally similar to Japan, but with some distinguishing characteristics. Primarily, accountability is different in the correlation between administrative procedure laws and civil servants' responsibilities.

3.1.1 Background of Accountability Concept in Vietnam

The term 'accountability' has recently appeared in research reports on organizational reform and anti-corruption solutions. In 2009, accountability was first used in the National Anti-Corruption Strategy.⁷ One of the strategy's objectives is to strengthen the inspection and supervision of the state power and prevent position abuse for private gains. Then, the government issued the legal norms on anti-corruption, which defined the accountability of civil servants in performing public duties and undergoing publicity and transparency of the state organs' activities.

In anti-corruption, 'accountability' is considered an indispensable constituent factor for ensuring publicity and transparency in the state operation. Accountability includes the responsibility for publicizing and explaining the requested information. In other words, 'accountability' is a means of safeguarding transparency. Hence, strengthening the state's accountability and people's access to information is an effective anti-corruption method in Vietnam.

⁷ Government of Vietnam, 'Resolution No. 21/NQ-CP on the National Strategy Against Corruption until 2020 [Nghị quyết số 21/NQ-CP về chiến lược quốc gia phòng, chống tham nhũng đến năm 2020]' (12 May 2009).

3.1.2 Common Meanings of Accountability Between Japan and Vietnam

Accountability meanings share several common points between the Vietnamese and Japanese legal systems. There are no differences regarding explicit definitions, subjects, and purposes.

Vietnamese accountability ‘trách nhiệm giải trình’ is translated as ‘duty to explain,’ which is similar to Japan. In other words, accountability describes the state organs’ obligations to explain their activities when requested by supervisory authorities or the people. For more details, supervisory authorities here mean that upper state organ as vertical management or watchdog agencies as horizontal management like the Government Inspectorate and the State Audit.

Regarding the connotation of accountability, two points should be considered, including (1) explanation and (2) responsibility of the state agents and civil servants’ performance. However, the Vietnamese and Japanese systems mainly regulate accountability as an explanation of duties. This point will focus on process-oriented control rather than result-oriented control. In exercising accountability, the state organs usually have obligations to unveil information and explain questions to the citizens. Following this action, the state organs must comply with the administrative procedures related to information disclosure.

Subjects of accountability are state organs and civil servants. Notably, It focuses on the organ head who must be accountable for their public duties. The head of a state organ is responsible for disclosing information about their performance following the anti-corruption law and relevant laws.⁸

The purpose of regulations on accountability is to ensure transparency and democracy in the state administration. As mentioned above, the first appearance of accountability in Japan was in the Administrative Procedure Act to serve transparency aims. Also, Article 1 of the Act on Access to Information Held by Administrative Organs (1999) in Japan affirms its goals to ‘promote a fair and democratic administration.’ By requesting disclosure of administrative information or commenting on the state’s policies, the citizens can conduct their rights to know. These procedures prove the democratic process in the state operation. Even though the historical background of the accountability concept in Vietnam is different, the general goals are similar to Japan, which aims to build a clean public administration and guarantee the citizens’ rights to access information.

Followed by legal schemes, the research provides the following concept of accountability in Vietnam: ‘Accountability is the responsibility of the state organs and civil servants in exercising public duties to explain and provide administrative information within their authorities when requested by horizontal and vertical supervisors or citizens.

⁸ National Assembly of Vietnam, Law on Anti-Corruption [Luật Phòng chống tham nhũng], 36/2018/QH14 (2018) art 12.

Accountability aims to ensure transparency in the state organs and civil servants' activities and protect the legitimate rights and interests of concerned organizations and individuals.'

The definition of accountability in Vietnamese laws is fundamentally similar to Japan, but with some distinguishing characteristics. Significantly, there are differences in the correlation between the rule on administrative procedures and civil servants' responsibilities.

3.1.3 Differences Between Japan and Vietnam

In addition to the above similarities, accountability in Vietnam and Japan certainly differs depending on the legal system and political influence. Basically, dimensions of the principal statutes related to accountability might lead to varying concepts.

If accountability is mainly mentioned in the Administrative Procedure Act of Japan, otherwise, Anti-Corruption Law is the primary statute regulating this matter in Vietnam. The Administrative Procedure Act mainly concentrates on process control, which sets up various procedures for state activities. In Japan, this concept highlights (1) disclosure of administrative information and (2) being accountable to the people (external accountability). Unlikely, Vietnamese accountability focuses on (1) answerability and explanation of their duties, (2) being accountable to the supervisory state organs, higher civil servant positions, and the party (internal accountability). In the scheme of civil servant laws, duties to explain will control behaviors of civil servants by Anti-Corruption Law, to serve the state management in preventing and handling corruption towards cleanliness of the civil service, which is the fundamental purpose of 'accountability.'

In Vietnam, accountability is still a new legal term. The current Vietnamese legal documents lack consistency in regulating this matter. In a broad sense, accountability consists of two factors: answerability and responsibility for all performance. In this sense of accountability, laws on the state organizational apparatus and the Law on Cadres and Civil Servants have direct or indirect provisions to oversee the implementation of the state organs and officials. It required the government and civil servants to periodically account for the process and result of using their authority. In other words, accountability broadly comprises (1) duties to explain and (2) responsibilities of the state organs and civil servants. In Vietnam's recent public administration reform, increasing external accountability is essential to strengthening new controls and counterbalances to guarantee access to information and improve civil service quality.⁹

In a narrower sense, accountability means to explain and provide information within the functions of state organs and civil servants to perform civil service. This understanding

⁹ Thi Ngoc Hien Bui, 'Improvement of Accountability in the Public Affairs in Vietnam [Nâng Cao Trách Nhiệm Giải Trình Của Khu Vực Công ở Việt Nam]' *State Organization Research Journal of Ministry of Home Affairs* (3 April 2016)
<https://tcnn.vn/news/detail/32758/Nang_cao_trach_nhiem_giai_trinh_cua_khu_vuc_cong_o_Viet_Namall.html>.

is specified in several laws, such as the Law on Handling Administrative Violations, Inspection Law, and Anti-Corruption Law. An explanation is that such organs and officials ‘give opinions and evidence to protect their legitimate rights and interests,’ according to Article 61 of the Law on Handling Administrative Violations. Besides, the Law on Supervisory Authorities of the National Assembly and the People’s Council mentions that ‘accountability is to explain and clarify responsibilities of relevant agencies and individuals in performing their assigned tasks and powers when the supervisors request.’¹⁰ In some cases, accountability is a tool for state organs and civil servants to speak up and explain their work correctly and legally.¹¹ Thus, both ordinary context and the legal documents in Vietnam mainly mention passive accountability.

Briefly, in Vietnamese legal documents, accountability is considered an act of state organs and civil servants to explain the correctness and legality of their actions. In that sense, ‘accountability’ is closer to answerability or explanation than responsibility. Hence, the Vietnamese legal system is biased towards handling accountability in the narrow sense, which means actions of the state organs and civil servants to explain their public duties when required (passive accountability.)

3.2 Accountability in the Scheme of Civil Servant Laws in Vietnam

The Vietnamese legal system today has various laws related to civil servants. Regarding legislation scope, the classification of legal documents for civil servants includes six hereafter groups. First, employment status comprises the Law on Cadres and Civil Servants, Public Employee Law, Military Officer Law, and Police officer Law.¹² Second, the behaviors of civil servants include the Anti-Corruption Law and the Law on Anti-waste of State Assets. Third, working conditions are comprised of the Labour Code, government decrees on remuneration. Fourth, appeal actions constitute Complaint Law, Denunciation Law,

¹⁰ National Assembly of Vietnam, Law on Supervision of the National Assembly and People’s Councils [Luật hoạt động giám sát của Quốc hội và Hội đồng nhân dân], 87/2015/QH13 (2015) art 2.8.

¹¹ Article 53 of the Inspection Law, for example, stipulates the following rights of inspected person ‘to explain matters related to the inspection content.’ According to Article 13 of the Law on Complaints, the complained person’s obligations are ‘to explain the legality and correctness of the administrative decision and action to be requested by the inspectorate agencies.’

¹² In term of employment status and civil servant management, Japan has two major acts which are the National Civil Service Act of 1947 and Local Civil Service Act of 1950. Dissimilarly, Vietnam has enacted a series of legal documents to govern this field. This system is complicated in comparison with other countries’ laws. Vietnam divides this framework for civil servants into several specific laws. The main law regulating civil servants is Law on Cadres and Civil Servants (LCCS) of 2008 applying to cadres and civil servants at both the central and local levels. There are thirty-eight governmental decrees and thirty-two circulars of Ministry of Home Affairs to detail and guide on implementing this law. The ministries, ministerial-level agencies, provinces also issued numerous legal normative documents and administrative rules to implement LCCS under their authorities. Besides, civil servants who are partisans also subject to the party’s regulation, even though sometimes the party’s regulations prevail to the law. After ten years of implementation, LCCS 2008 reveals shortcomings and inadequacies with the new Constitution of 2013, Law on the Central Government Organization of 2015, and Law on the Local Government Organization of 2015.

Administrative Litigation Law, and the Law on the State's Compensation. Fifth, personnel authorities are comprised of the Law on the Central Government, the Law on the Local Government, and decrees on the structure and functions of ministries. Sixth, the party's regulations oversee the promotion, evaluation, discipline, and other personnel actions for cadres and civil servants who are partisans.

Accountability in Vietnam is often easier to understand as a state obligation than an administrative procedure. Therefore, the Vietnamese legal system for accountability mainly refers to the duties of the state and civil servants and is primarily biased towards adjusting internal accountability. Law on Cadres and Civil Servants, Anti-Corruption Law, and Law on Accession to Information are the three laws most directly related to the question.

3.2.1 Laws on Cadres and Civil Servants of 2008

In 2008, the National Assembly enacted the Law on Cadres and Civil Servants and the Law on Public Employees of 2010 and later amended these two laws in 2019. Noticeably, the highest legislative body has regulated civil servants for the first time in Vietnamese civil service history. Civil servants of Vietnam today are briefly understood who work for regular services in the state organs, and the communist party's organs receive a salary from the state budget. Dissimilar to Japan, Vietnamese civil servants include people working permanently in the Communist Party's organs and socio-political organizations at national and local levels.

Regarding the scheme of civil servant laws, accountability is an obligation of civil servants. Under the Vietnamese Constitution, government members, the head of the Supreme Court, the head of Supreme Prosecutors, and the head of the State Audit have to provide reports or answerability when the National Assembly requests.¹³ The Law on Cadres and Civil Servants and Anti-Corruption Law regulate these matters directly about the must-do behaviors and prohibitions for civil servants. Civil servants' obligations are compliance with the Constitution and laws; protecting the state's interests, the legitimate rights and interests of organizations and citizens; being subjects of the people's inspection and supervision; ensuring systematic, uniform, continuous, smooth, and effective civil service; ensuring administrative hierarchy and effective coordination.

Accountable subjects (including the state organs, cadres, and civil servants) must explain to horizontal and vertical supervisors. The tasks and powers of civil servants serve as a basis for determining the explanation contents. Therefore, the Law on Cadres and Civil Servants provides the most general provisions on their obligations in performing public duties. Also, there will be specific rules of the agency for civil servants in each particular position.

¹³ National Assembly of Vietnam, The Constitution of the Socialist Republic of Vietnam in 2013 [Hiến pháp năm 2013 cộng hòa xã hội chủ nghĩa Việt nam] (2013) art 77.1.

Besides, Anti-Corruption Law has provisions reflecting mandatory requirements for civil servants. The law defines corruption as committed by officeholders in state organizations who have taken advantage of their position to embezzle, bribe, or knowingly act against the law for rent-seeking, causing damage to the state properties and infringing on the functioning of agencies.

Law on Cadres and Civil Servants does not directly regulate accountability. However, civil servants must fully follow all duties by this law and other specific laws related to their civil service performance, such as Anti-Corruption Law and Law on Accession to Information. Hence, accountability is an obligation of civil servants to carry out public duties. Accountability in Vietnam is regularly focused on two points. The first dimension is the state organs' responsibility to explain. Another is the head's responsibility before all performance of their state organs and answer or explain to the people. The section below will analyze more details on civil servants' accountability.

3.2.2 Laws on Anti-Corruption of 2018

The Anti-Corruption Law (2018) is Vietnam's principal statute regulating accountability. Accountability is an indispensable constituent factor when referring to the requirements of publicity and transparency in the state administration. This law emphasizes the duties of the state organs and civil servants in clearly explaining their activities under the code of conduct for fighting against corruption.¹⁴

Accountability includes a person's responsibility to disclose requested information as well as explain and clarify such information. In other words, accountability is a tool for transparency. Article 5.3 of the Anti-Corruption Law stipulates accountability with the responsibility of a competent organization or individual to clarify information or provide a timely and adequate explanation about their decisions or actions when performing their duties. The current law mainly refers to passive accountability, which means the obligation of state organs to explain and provide information when requested by state supervisory authorities, organizations, and citizens.

Therefore, in the Vietnamese public sector, there are two accountable subjects (1) the state and (2) the civil servants performing public duties.¹⁵ Hence, this paper mentions the accountability of civil servants in depth. The explaining person shall be the organ head or authorized person to explain. By concentrating on anti-corruption laws, Vietnam has focused on demonstrating peer-to-peer administrative accountability, which is the organ's responsibility with vertical monitoring functions, such as the Government Inspectorate and

¹⁴ Tuan Khanh Nguyen, 'Improve Accountability Laws [Hoàn Thiện Cơ Sở Pháp Lý về Trách Nhiệm Giải Trình]' (*Central Committee of Internal Affairs of the Vietnamese Communist Party*, 3 September 2013) <<https://noichinh.vn/nghien-cuu-trao-doi/201309/hoan-thien-co-so-phap-ly-ve-trach-nhiem-giai-trinh-292197/>>.

¹⁵ National Assembly of Vietnam, Law on Anti-Corruption (n 8) art 15.

the system of local inspectorates. Besides, the state organs have to account for other horizontal supervision of the State Audit, oversight of the court system, and the society.¹⁶

3.2.3 Laws on Accession to Administrative Information of 2016

In Vietnam, accession to information is a constitutional right of citizens.¹⁰ Article 14 of Vietnam's Constitution in 2013 affirmed that the state organs and civil servants should recognize, respect, protect and ensure human rights and citizenship. The Constitution also confirms that the law can only restrict citizenship in case of necessity for national defense, security, social order and safety, social ethics, and public health.

Specifying the Constitution, accountability is closely related to publicizing state operations and ensuring citizens' right to access information. Accountability is associated with providing information to the beneficiary persons within the assigned tasks and powers of the state organs or civil servants. In addition, it is also considered a method of ensuring citizens' supervision of state power. Therefore, the Vietnamese Law on Access to Information regulates on duties of the state organs to provide publicity, transparency, and accountability.¹¹ This Law ensures the people's right to access information through passive and active methods.¹⁷

3.3. Legal Issues of Accountability in Vietnam Focused on Civil Servant Laws

Both Japanese and Vietnamese legal schemes for accountability have not been perfect yet. Some problems around subjects of accountability will be examined hereafter.

3.3.1 Who Are Accountable?

Regarding subjects of accountability, the laws consider two groups: requesters and organs/persons responsible for their actions. The state organs and officials are accountable for their public duties.

The primary subjects of accountability in Vietnam vary depending on the legislative scheme. In terms of the Law on Cadres and Civil Servants and the Law on Anti-Corruption, cadres and civil servants will be the key subjects. Meanwhile, the Law on Accession to Information of 2016 only regulates the state organs responsible for providing information produced by them.

¹⁶ Phạm Duy Nghĩa, 'Accountability: Towards Standards of a Public Administration Serving the Development [Trách Nhiệm Giải Trình: Vươn Tới Những Chuẩn Mực Của Một Nền Hành Chính Phục vụ Phát Triển]' (2019) <https://fsppm.fulbright.edu.vn/cache/MPP2019-542-R09V-Trach-nhiem-giai-trinh_Vuon-toi-nhung-chuan-muc-cua-mot-nen-hanh-chinh-phuc-vu-phat-trien--Pham-Duy-Nghia-2018-08-01-10332786.pdf>.

¹⁷ Active accountability, for example, means to publish laws, policies, and administrative procedures voluntarily. Passive explanations are the state organs (executive, legislative, and judicial bodies) providing information when requested by citizens. However, non-accessible information includes state confidential information; information that may harm the interests of the State, national defense – security, international relations, social order and safety, social ethics, public health, people's life or property; and state agency's internal information.

The state organs mentioned above include legislative, executive, and judicial agencies. Accountability inside the state administration is the activities of cadres, civil servants, and public employees to report before other horizontal or vertical supervisory authorities. Under the legal framework for civil servants, they only take accountability to their supervisors for assigned tasks. In other words, civil servants are solely accountable vis-à-vis inside the state administration.

As mentioned by Professor Kadomatsu, subjects of accountability are a controversial issue in the Administrative Information Disclosure Act of Japan.¹⁸ The question is ‘who takes charge of accountability’ between the agent and principal, particularly with various stakeholders. Similarly, the relationship between the agents and principals taking charge of this matter concerns Japan and Vietnam.

3.3.2 Accountability to Whom?

In terms of the subject requesting accountability, the research will analyze actions to (1) state organs (vertical and horizontal accountability), (2) the people, and (3) the party (political explanation). The section below uses this analysis framework to identify the current accountability situation in Vietnam.

In Japan, concerning accountability-receiving subjects, the current system raises the question of whether foreign residents have the right to request information disclosure due to vague regulations on ‘any person’ to request disclosure. Looking into Vietnam, Laws on Accession to Administrative Information stipulate that the legislation applies to ‘citizens.’ In other words, the right of accession to administrative information solely belongs to the Vietnamese people. Limitedly, the law on anti-corruption narrows requestors for organizations or individuals directly related to administrative decisions or behaviors.

Additionally, the Administrative Procedure Act in Japan focuses on the accountability of state organs to ‘the people.’ Unlikely, Anti-Corruption Law in Vietnam focuses on internal accountability, which means explaining to upper or supervisory government agencies. Hence, Vietnam has a weak mechanism for implementing the people’s sovereignty.

The Vietnamese system has an issue with ‘accountability to the party.’ There is an unclear-cut boundary between political and executive accountability, and collective and individual responsibility. The party conducts a comprehensive leadership of the political system and state, but it is not explicitly responding to the people. The party sets out guiding policies and appoints top positions to the public sector without responsibility for their failures.

Within the Vietnamese Communist Party’s leadership, the party participates in executive activities by selecting personnel and enacting directional policies on the pivotal issues of the country’s socio-economic development. However, the party works based on the

¹⁸ Kadomatsu (n 3) 12.

principle of collective leadership. This mechanism leads to difficulties in determining who takes accountability in specific cases, particularly wrongdoings in the promotion of government personnel in recent years, given the fact that it has been decreasing individual responsibility.

Also, the party decides the top government positions, which is the bottleneck in vertical (top-down) administrative accountability. Traditionally, superiors decide to appoint, evaluate, and replace subordinate personnel. However, the political influence in personnel actions has consequently induced non-compliance in the state administration. The prime minister does not have the full right to choose ministers. Ministers do not have the full right to choose deputy ministers, and deputy ministers do not have the right to select department heads. Just like that, the leader who wants to fire their subordinates must comply with the negotiation process followed by the party's regulation. This trouble leads to problems in vertical accountability.

The state powers in Vietnam are not built on the principle of check and balance, leading to limitations of accountability to supervisory authorities horizontally. For clarification, horizontal supervisory organs are the Government Inspectorate, the State Audit, representative bodies, and courts. The coordination mechanism lacks independent power to check and balance executive organs and is ineffective in accountability among peer-to-peer agencies.

Besides, several issues are relevant to the conflict between accountability to the party and the people in Vietnam. Remarkably, political responsibility has revealed less connection with the people. Political accountability shows compliance, loyalty to the party, and less regard for the people. In other words, individuals/organizations in public administration are directly responsible to the party but only indirectly to the people. Indeed, the entire system is sluggish in responding to people's diverse interests. As a result, the risk of the current system has been skewed for interests, strong in propaganda, explaining the top-down line. However, this administration is poor in being accountable to the people.

Importantly, accountability to the people is weak due to unsustainable criticism of the press and citizens. The legal foundations for ensuring freedom of expression, freedom of the press, freedom of publishing, freedom of association, and especially public comments have remained uncertain. The state administration retains powers to widespread and un-transparent intervention in media. As a result, citizens lose their enthusiasm for political participation, so accountability before society will be weakened.

3.3.3 Account for What?

Information disclosure is a fundamental element of accountability. Japan and Vietnam have laws allowing citizens access to information for state administrative activities. However, the problem is the limitations of the data being accessed. Both countries have some restrictions on this issue, but their extent varies to different political and governmental systems.

Every person, corporation, or group in Japan can request access to ‘administrative documents.’ An ‘administrative document’ is prepared or obtained by an administrative body for organizational use by its employees. The Administrative Information Disclosure Act excludes from its scope documents published to sell to a broader public (such as official gazettes, newspapers, and books) and historical, cultural, or academic archived materials.¹⁹

In Vietnam, the state organs and officials must account for their decisions and actions in the civil service when requested.²⁰ Also, the state organs disclose information that they produce.²¹ Civil servants account not only for performing tasks but also for their assets. The reasons are that regulation on the publicity of income and property is a compelling reminder to civil servants to fight against abusing their powers for private gains.

There are barriers to people accessing information in Vietnam. The scope of state secrets is too broad and vague, severely affecting publicity. Also, the political nature of the system affects information transparency and accountability. The united regime of the political system and state administrative organs leads to less control and supervision from the outside. Remarkably, information disclosure is bound by many secret party regulations and vague boundaries with ordinary administrative rules. The application of both party regulations and state laws sometimes overlap.

Meanwhile, civil servants ‘fear responsibility’ for providing information to people due to many party regulations being confidential. Furthermore, the most difficult is still in the post-inspection stage of enforcing the people’s right to complain and denunciation on access to information, which is in the hands of state organs and administrative courts. Sadly, both these organs are under the same political system, harming the independence of the courts. Besides, rendering judgments often focus on significant violations rather than considering the government’s guilty inaction.

3.3.4 How to Account?

In Japan, the Policy Evaluation Act allows people to participate in the policy-formulating stage through comments on draft policies and state responsibilities in response to these comments. This procedure aims to evaluate the policy’s effectiveness, serving the remediation and elaboration of new approaches in the future. It can be seen as result-oriented control. However, such a control is only a ‘one and half return trip’ process for the people because the state might or might not listen to it.²² Even so, accountability is understood as a tool for ensuring compliance with the procedural rules of transparent state operations.

¹⁹ Article19, ‘Country Report: The Right to Information in Japan’ (6 October 2015) <<https://www.article19.org/resources/country-report-the-right-to-information-in-japan/>>.

²⁰ National Assembly of Vietnam, Law on Anti-Corruption (n 8) art 15.1.

²¹ National Assembly of Vietnam, Law on Access to Information [Luật tiếp cận thông tin], 104/2016/QH13 (2016) art 9.

²² Narufumi Kadomatsu, ‘The New Administrative Information Disclosure Law in Japan’ (1999) 4 Journal of Japanese Law 34 <<https://www.zjapanr.de/index.php/zjapanr/article/view/816>>.

Similarly, Vietnam has the same problem as Japan. Accountability regulation seems to emphasize process control rather than control over results. Vietnam's Law on Access to Information focuses on procedures for publicizing information in state operations, specifically the constitutional rights of citizens 'to access information'.²³ Meanwhile, the Anti-Corruption Law explains state organs' and civil servants' actions to ensure civil service transparency.²⁴ Administrative activities concentrate on the duly process rather than the policy output.

Moreover, almost regulations on accountability refer to the act of explanation rather than the result of performing public duties. Therefore, during citizen's complaints, state organs and civil servants often explain and persuade their administrative acts rather than confess faults and recover consequences. Reasonably, resignation is very rare in the state administrative apparatus in Vietnam.

Regarding proactive or passive accountability, Japan's accountability-related legal schemes do not require proactively administrative information exposure. Japan designs information disclosure mainly 'passive and on an ad-hoc basis.'²⁵ In other words, information disclosure when requested rather than obligatory publicity. Although the act does not require publishing public information proactively, there is a guideline for using administrative information by websites and other online tools. In this way, the ministries might voluntarily provide information.

Similarly, Vietnam's system is based on passive accountability. Accordingly, the state organs and civil servants must publicize information to explain their activities if any organization or citizen requests. Unlike Japan, Vietnam's Law on Accession to Information regulates proactive accountability in the following two cases. First, when the state promulgates new laws. Second, when incidents occur under the state's management, civil servants should inform fully and timely about what happened to relevant individuals and organizations to seek remedies. Also, the Anti-Corruption Law stipulates six forms of proactiveness: publication at meetings, notifying in writing, and publications to the press or website.

3.3.5 Accountability Preserving Mechanism

Various mechanisms aim to ensure accountability in Vietnam: (1) supervision of the National Assembly and the people's council; (2) supervision of the procuratorate based on its function in overseeing judicial activities, but the procuratorate only can supervise the government's accountability when a case related to the government is prosecuted and before

²³ National Assembly of Vietnam, The Constitution of the Socialist Republic of Vietnam in 2013 (n 13), art 25.

²⁴ Article 15 of Law on Anti-Corruption of 2018: 1. An organization or individual shall provide explanation for their decisions or actions during performance of their duties at the request of the organization or individual that is directly affected by such decisions or actions. The explaining person shall be the head of the organization or a person lawfully authorized to provide explanation.

²⁵ Kadomatsu (n 3) 12.

the court; (3) top-down (vertical) supervision; (4) Horizontal supervision (the state audit, the governmental inspectorate, the police investigation); (5) supervision of the people and social organization. However, public supervision in Vietnam is relatively weak. A Bill on the Associations of Vietnam has not yet been enacted for many years. The people might file a complaint or denunciation to protect the right to accession information, but this mechanism seems ineffective in Vietnam.

4. Conclusion

Accountability is an essential part of civil service that every country strives to improve for effective civil service. The main content of public duties is the ‘duty to explain,’ which emphasizes transparency and publicity. Japan and Vietnam regulate accountability with various laws. In particular, the significant rules are administrative procedure, information access, and policy-making.

The concept of accountability in Vietnam occurred amid a deepening struggle with corruption towards a clean public administration. From the dimension of civil servant laws, accountability is associated with the civil servants’ obligations in performing public duties. They must explain administrative decisions and behaviors and provide information at the request.

This study highlights the legal characteristics of accountability in Vietnam by referring to Japan’s experiences. (1) Vietnam did not have an official definition of accountability until 2013. The first detailed mention of accountability was in the anti-corruption laws. (2) In terms of definition, accountability is understood as the explanation of state organs and competent civil servants’ performance (duty to explain). (3) Accountability in Vietnam is usually undertaken on a passive and ad-hoc basis, like in Japan. (4) Anti-Corruption Law is a primary statute regulating accountability. (5) The subject of accountability consists of the state organs and officials performing public duties, especially emphasizing the heads’ responsibilities. (6) the accountable subjects are responsible to the supervisory authorities (vertical and horizontal organs inside the state administration—internal accountability), to the Vietnamese Communist Party (political accountability), and to the people and social organizations (external accountability). The legal schemes related to accountability in Vietnam focus on internal accountability to serve an anti-corruption purpose. (7) Accountability aims to safeguard transparent and democratic public administration. By accountability, the people’s constitutional right ‘to access information’ is guaranteed. (8) Political accountability is one fundamental specialty of Vietnam. However, there are various problems arising around this issue. For example, the party’s collective mechanism weakens individual accountability. Hence, Vietnam’s public administration reforms have tried to improve the government’s accountability, but it has not been solved effectively.

Vietnam’s accountability regulations are not perfect tools to ensure publicity and transparency in state administrative activities. In recent years, promoting accountability in the public sector has played a critical element in the context of public administration reform.

Vietnam's government has established legal grounds on this matter since 2013. Significantly, Vietnam should continue to improve the following specific regulations on accountability.

First, the accountability of state organs and civil servants must be expressed in the law on civil service and civil servants' duties. These legal documents should pay attention to the accountability of each agency and civil servant to the people under their assigned functions, tasks, and powers. Specific provisions on civil servants' obligations are legal grounds for evaluating their performance. At the same time, there will be a clear legal basis for requesting civil servants to account for unfinished tasks or adverse consequences from their duties. By request, the people could undertake their power through direct democracy.²⁶

Also, Vietnamese law should specify the civil servants' accountability to explain the origin of their additional assets. Controlling the state officials' property which aims at income transparency, is essential to prevent corruption. This approach is in line with international norms as required in Article 20 of the United Nations Convention Against Corruption (unexplainable assets might constitute illegal enrichment of an influential person). To that extent, Vietnam should improve the accountability regulations of high positions on the origin of properties. They might be bound to legal consequences if they cannot explain unusual assets.

Second, civil servants' accountability must be supervised by the representative bodies, social organizations, and the people. Besides, it is necessary to strengthen the inspection and examination of civil servants' performance. Especially regulations on internal assessment play a particularly vital role.

Third, Vietnam needs to improve legal responsibilities and handle violations in the fact of unfulfilled accountability of civil servants. Accountability is the responsibility to ensure publicity and transparency of the state administration. The proactive publicity and transparency of the state organ and civil servant's activities is an effective way to ensure democracy in state management and the social right to supervise by requiring explanations and information publicity on the state organs' activities. Therefore, the government should promote information publicity to explain the agencies' actions effectively.

Strengthening the law on accountability of civil servants is a vital mission of the Vietnamese government towards an administration serving the people. Vietnam needs to finally improve the law on civil servants to supplement detailed provisions on the civil servants' obligations concerning accountability. Such requirements include performance results, information publicity, and civil servants' income explanations. At the same time, the law should also have appropriate sanctions for accountability violations to enhance the civil servants' awareness and responsibility for this matter.

²⁶ Tuan Khanh Nguyen, 'Ensuring Rights to Access to Information and Governmental Accountability [Bảo Đảm Quyền Tiếp Cận Thông Tin và Vấn Đề Trách Nhiệm Giải Trình Của Chính Phủ]' (*Vietnam Government Inspectorate Online News*, 2018) <<http://thanhtraivietnam.vn/nghien-cuu-trao-doi/bao-dam-quyen-tiep-can-thong-tin-va-van-de-trach-nhiem-giai-trinh-cua-chinh-phu-185853>>.

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