



Perspectives on Constitutional Responsibility Some Countries in the World: Introduction and Comparison with Vietnam*

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Abstract

The constitution is a document that has the highest position in the legal hierarchy, acting as the original law and as the basis for other documents in each country's legal document system. Its contents are indispensable in most constitutions. With the highest legal position and consequences, the Constitution has an important role in guaranteeing human rights and the rights of citizens by recognizing these rights and binding the state's responsibility in realizing these rights. Constitutional rights and the constitution is also a document that limits the power of the state. This research combines legal research methods and interdisciplinary approaches. Includes methods such as analysis, synthesis, statistical analysis, and comparison. The research results state that constitutional responsibility is an important tool for strengthening and developing democracy, but in practice, not all countries are directly mandated by their constitutions or legal documents as a form of special responsibility. This article provides an overview of constitutional responsibility in different countries to compare and offers ideas for considering institutions of constitutional responsibility in Vietnam.

Keywords: Responsibility; Legality; Constitution; World; Vietnam

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Perspektif Tanggung Jawab Konstitusi Beberapa Negara di Dunia: Pengantar dan Perbandingan dengan Vietnam

abstrak

Konstitusi adalah dokumen yang memiliki posisi tertinggi dalam hierarki hukum, bertindak sebagai hukum asli dan sebagai dasar untuk dokumen lain dalam sistem dokumen hukum masing-masing negara. Kontennya sangat diperlukan dalam sebagian besar konstitusi. Dengan status hukum dan konsekuensi tertinggi, konstitusi memiliki peran penting dalam menjamin hak asasi manusia dan hak warga negara dengan mengakui hak-hak ini dan mengikat tanggung jawab negara dalam mewujudkan hak ini. Hak konstitusional dan konstitusi juga merupakan dokumen yang membatasi kekuasaan negara. Penelitian ini menggabungkan metode penelitian hukum dan pendekatan interdisipliner. Mencakup metode seperti analisis, sintesis, analisis statistik, dan perbandingan. Hasil penelitian menyatakan bahwa tanggung jawab konstitusional adalah alat penting untuk memperkuat dan mengembangkan demokrasi, tetapi dalam prakteknya, tidak semua negara secara langsung diperintahkan oleh konstitusi atau dokumen hukum mereka sebagai bentuk tanggung jawab khusus. Artikel ini memberikan gambaran tentang tanggung jawab konstitusional di berbagai negara untuk membandingkan dan menawarkan ide-ide untuk mempertimbangkan institusi tanggungjawab konstitusi di Vietnam.

Kata Kunci: Kewajiban; Hukum; Konstitusi; Dunia; Vietnam

Перспективы конституционной ответственности Некоторые страны мира: введение и сравнение с Вьетнамом

Абстрактное

Конституция является документом, который занимает самое высокое положение в правовой иерархии, выступая в качестве первоначального закона и в качестве основы для других документов в системе правовых документов каждой страны. Его содержание незаменимо в большинстве конституций. С самым высоким правовым статусом и последствиями Конституция играет важную роль в обеспечении прав человека и прав граждан, признавая эти права и обязывая государство осуществлять эти права. Конституционные права и конституция также являются документом, ограничивающим власть государства. Это исследование сочетает в себе методы правовых исследований и междисциплинарные подходы. Включает такие методы, как анализ, синтез, статистический анализ и сравнение. Результаты исследований свидетельствуют о том, что конституционная ответственность является важным инструментом укрепления и развития демократии, однако на практике не все страны прямо предусмотрены их конституциями или правовыми документами в качестве формы специальной ответственности. В этой статье представлен обзор конституционной ответственности в различных странах для сравнения и представлены идеи для рассмотрения институтов Конституционной ответственности во Вьетнаме.

Ключевые слова: Ответственность; Законность; Конституция; Мир; Вьетнам

A. INTRODUCTION

Responsibility is a fundamental value stipulated in the Constitution and is bound by the provisions of the law. The activities of public authorities within the state, whether elected or appointed, must be regulated to clearly define their jurisdiction and responsibilities of state power organizations.

Legal responsibility is one of the crucial aspects and one of the most fundamental characteristics of the law. It is an essential element in the functioning mechanism of any legal system. Legal responsibility holds a central position in legal theory, and it is also a vital and essential issue in constitutional law. ([Lazarus, Liora; Goold, Benjamin J.; Desai, Rajendra; Rasheed, Qudsi, 2013; Watkins, Jeremy, 2014](#))

Constitutional responsibility can be a powerful and reliable tool to safeguard the rights and freedoms of citizens, a necessary condition for strengthening and developing a democratic society. Thus, constitutional responsibility not only has the potential to serve as a theoretical model but also holds practical significance.

However, it is essential to differentiate between the concept of legal responsibility within the Constitution and legal responsibility for the Constitution. The first type relates to all issues of legal responsibility stipulated in the constitution: civil responsibility, administrative responsibility, and criminal responsibility. The second type of responsibility mentioned in the article's content is a distinct form of legal responsibility, enacted within specific branches through constitutional provisions and laws. In other words, these are accountability measures that entities must bear when engaging in actions that violate the Constitution and documents within the domain of constitutional law. Therefore, if we only consider the legal responsibilities stipulated in constitutional norms, it is insufficient, and constitutional responsibility is an aspect of legal responsibility for the Constitution. Explaining responsibility, derived from broader social responsibilities, is a more extensive and complex obligation. ([Adriana Miron, 2017](#))

B. METHODS

Research on constitutional legal responsibility is a direction that many scholars are increasingly interested in. Studies are primarily conducted from the perspectives of legal science, sociology, political science, philosophy, and more. In this study, the author applies a systematic approach while inheriting

the findings of previous works to enhance theoretical foundations and evaluations. Throughout the research project, a combination of methods from legal research and interdisciplinary approaches is employed, including methods such as analysis, synthesis, statistical analysis, comparison, and more, to accomplish tasks aimed at achieving the stated research objectives.

C. RESULTS AND DISCUSSION

1. Perspectives on Constitutional Responsibility - a Type of Legal Responsibility in Some Countries

In certain countries, constitutional responsibility is directly stipulated as a distinct form of legal responsibility, a separate and distinctive legal-political responsibility often referred to as political responsibility or legal-political responsibility. This is further classified into administrative, civil, and criminal responsibilities, such as in Chile, Peru, and Mexico ([Gamboa Montejano, Claudia; Valdés Robledo, Sandra, 2007](#)). Researchers in these countries pay less attention to theoretical studies regarding the concept of constitutional legal responsibility, as well as its specific characteristics, features, and nature.

Unlike the above-mentioned countries, Russian law does not employ the term "legal responsibility," but this term has long been widely used by the Russian Constitutional Court and legal scholars. Starting from the 1970s in the Soviet Union, the study of issues related to constitutional responsibility as a form of legal responsibility began to be explored and discussed, albeit under the term "state legal responsibility," specifically investigating the responsibility of the government towards collegiate representative bodies, as well as the responsibility of parliament members towards the electorate.

The Romanian constitution also includes provisions concerning the exercise of parliamentary control over the government, encompassing the oversight of the government's responsibility and the responsibility of government members for improper activities they engage in. The relationship between the Parliament and the government is both political and legal (Article 109 of the Constitution of Romania). Similarly, the Romanian President enjoys immunity and is only held accountable for treason (Article 96 of the Constitution of Romania). France's 1958 Constitution also contains a provision: "The supreme court shall try the President if the President is accused of high treason in the course of performing his duties" (Article 68 of the Constitution of French).

The foundation of constitutional legal responsibility (violations of the constitution) differs significantly not only from the foundation of criminal responsibility (criminal offenses) but also from other types of wrongful acts (violations), such as administrative, disciplinary, or civil responsibilities. Furthermore, the basis of constitutional responsibility may not only stem from acts of non-compliance with constitutional or legal rules but also from the occurrence of events, conditions, and circumstances directly stipulated by the Constitution. Professor Sakhray S.M. stated: Constitutional responsibility is a unique form of social responsibility with complex political and legal essence, and behind it lies the act of violating the constitution. This is manifested in particularly negative consequences for the subject of the violation ([Шахрай С.М., Учебник для академического бакалавриата и магистратуры, МГУ, 2017](#)).

Given the above issues, there is a systematic need to analyze the current state of constitutional responsibility worldwide concerning the evolution of the concept and the necessity to improve legal regulations regarding constitutional responsibility as a means to ensure constitutional order.

In different countries, legal responsibility is viewed from various angles. For instance, in the People's Republic of China (PRC), while criminal responsibility is the primary focus of legal responsibility studies, there is also research on constitutional legal responsibility, alongside other types such as civil, administrative, disciplinary, and economic legal responsibilities. Constitutional responsibility in China has recently garnered more attention, with renowned Chinese legal scholars commenting on its independence. However, a distinct point in China is that constitutional responsibility is understood as legal accountability for acts that violate the Constitution. ([Giang Lam, Ngo, 2020](#))

In Latin American countries such as Chile, Peru, and Mexico, administrative, civil, criminal, and political responsibilities are distinct from each other. The same applies in Brazil, where they consider this a political responsibility ([Cheibub, Joseph Antonio; Przeworski, Adam, 1997](#)). Therefore, according to legal scholars from Brazil, political responsibility is not just a constitutional concept but primarily a cultural concept. Essentially, it is the legal responsibility of individuals engaged in political work, or in other words, it is the responsibility of politicians. ([Mascarenhas, Rodrigo Tostes de Alencar, 2021](#))

In Italy, a particular type of legal responsibility has been proposed: political and constitutional responsibility. This type of responsibility is

discussed because there is a viewpoint that the President is not held accountable for actions performed in the line of duty, except in cases of treason or constitutional violation. In this context, political and constitutional responsibility encompasses the unique nature of the powers conferred by the Constitution upon the head of state and arises from their role as the representative of national unity.

In the United States, constitutional responsibility is an independent form of legal responsibility that is not discriminatory but pertains to legal responsibilities within constitutional law ([Sacco Francesco, 2012](#)). Constitutional responsibility includes any legal responsibility, whether criminal, administrative, or civil, arising from any act that violates the Constitution's provisions and regulations. However, it can be said that political responsibility exists when high-ranking executive officials are compelled to resign due to impeachment or after a vote of no confidence in Parliament.

In Poland, constitutional responsibility and legal responsibility have been clearly defined in the Constitution. Article 198 of the Constitution of the Republic of Poland lists those who are "legally responsible for acts violating the Constitution or laws in connection with their position or in the performance of their political duties."³

Russian law distinguishes various types of legal responsibility such as civil, administrative, criminal, and disciplinary responsibilities. However, constitutional legal responsibility is considered an independent form of legal responsibility.

In summary, constitutional responsibility is an independent form of legal responsibility. The implementation of various forms of penalties (in the form of unfavorable consequences for the subjects) is not only established by constitutional and legal norms but also primarily serves the purpose of protecting constitutional and legal relationships. Recognizing and establishing the constitution and legislation as forms of legal responsibility will enhance the effectiveness of constitutional and legal norms, strengthening their influence on political and social realities. This contributes to addressing one of the most pressing issues of constitutional law.

³ Paragraph 1, Article 198 of the Polish Constitution provides: "In violation of the Constitution or a law in the course of its performance within or under its authority, the following persons shall be held accountable according to the provisions of the Constitution before National Court: President of the Republic of Poland, Prime Minister and members of the Council of Ministers, President of the State Bank of Poland, President of the Supreme Audit Office, members of the Radio and Television Council The State, who are empowered by the Prime Minister to manage a ministry, and the Commander-in-Chief of the Armed Forces."

The type of constitutional legal responsibility is being examined following the inherent characteristics of legal responsibility in general, as well as its attributes and nature, to determine its essence as a relatively independent legal phenomenon. Common indicators of constitutional legal responsibility are specifically reflected, yet they also have relevance to legal responsibility in general. However, constitutional responsibility cannot be entirely analogous to other types of legal responsibility because the content of legal responsibility must align with the content of relevant constitutional and legal relationships, without any contradiction between them.

Based on the common features of legal responsibility, constitutional legal responsibility also arises in numerous cases during the course of politicians carrying out constitutional activities. Therefore, constitutional legal responsibility is defined as follows: Subjects of constitutional and legal relationships established by constitutional and legal norms must be responsible for acts of non-compliance with legal provisions during the execution of their constitutional and legal duties, where such acts impact the rules established and ensured by authorized bodies applying state (or equivalent) penalties ([Vadim.a.Vinogradov, 2022](#)).

One of the primary functions of constitutional legal responsibility is restoration (adjustment of subjects' behavior within constitutional relationships). Simultaneously, like other forms of legal responsibility, it serves the function of penalizing subjects for committing actions that may be punishable within the domain of constitutional and legal relationships. By preventing future violations of the constitution, this legal responsibility also performs a preventative function. While these goals might not be explicitly stipulated in constitutional law provisions, they stem from the legal nature of constitutional legal responsibility.

2. Constitutional Responsibility in Vietnam

In Article 50 of Vietnam's 1946 Constitution, it is stipulated: "The President of the State of Vietnam shall not bear any responsibility, except when committing treason." This means that the President can exercise all their powers without facing any accountability for their actions, aiming to enhance proactivity, decisiveness, and creativity in administration and governance. Furthermore, the President is not accountable to the National Assembly for their entire activities in any circumstance. However, even though granted significant constitutional authority, if the President commits treason, they will

be judged by a special court elected by the National Assembly (Article 51 Constitution 1946 – Constitution of the Democratic Republic of Vietnam). Therefore, based on the conditions and circumstances of Vietnam at that time, the aforementioned responsibility of the President can be considered a political and constitutional responsibility, which is a privilege bestowed upon the head of state by the Constitution.

Since the 1946 Constitution, the provisions regarding the President's responsibility as in the 1946 Constitution have not been mentioned, but rather replaced with "The President shall bear responsibility and report to the National Assembly." Research on constitutional responsibility has not been extensively discussed, in-depth research works are lacking, and when mentioning constitutional responsibility, the viewpoint in Vietnam generally regards it as a political responsibility, as political responsibility equates to responsibility before the electorate. However, the author shares a perspective with Bui Ngoc Son, suggesting that constitutional responsibility is a form of political-legal responsibility, albeit narrower than political responsibility. Similar to other forms of legal responsibility, constitutional responsibility must be an independent type of responsibility and a responsibility of the State, requiring clear and specific regulations. ([Bui Ngoc Son, 2003](#))

The constitutional legal responsibility of positions established based on the constitution, especially those heading the organizational systems within the apparatus, is the duty to abide by and uphold the constitution of a nation. These positions must comply with and implement the constitutional provisions and laws recognized by the state, while also safeguarding the legitimate rights and interests of citizens. Furthermore, these positions need to protect and preserve societal values, respect the independence of the judiciary and other institutions, uphold the freedoms and equality of citizens, and ensure honesty and fairness in the execution of laws. Only by doing so can a strong democratic system and legal framework be maintained and developed.

D. CONCLUSION

In the context of new conditions for social development and social relationships, establishing mechanisms of constitutional responsibility must align with the times and the objectives pursued by various nations. To achieve this, there needs to be coordination between the state and ethical standards, legal standards, political considerations, the implementation of constitutional provisions, the organization of the state apparatus, the division of powers, and

a crucial matter, which is the relationship between the accountability and reporting of politicians and high-ranking officials of the state. This is a pressing contemporary issue as it impacts not only the political landscape of a nation but also the transition and transformation of an entire country. Therefore, thorough research into this type of responsibility is imperative in today's context due to the unique nature of constitutional matters. The distinctive nature of the constitutional relationship and the legal aspects of constitutional responsibility lead to the conclusion of the relatively independent nature of constitutional responsibility as a component of constitutional law. It sets it apart from many other elements of constitutional law due to its rich legal content.

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