MINISTRY OF EDUCATION AND TRAINING

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THESIS SUMMAR

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THESIS SUMMAR

Major: Theory and History of the State and Law
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PART A. INTRODUCTION

1. Rationale of the research project

Social management is an important issue of all countries and ethnic groups in all times with the aim of creating a safe living environment for people, ensuring the existence and sustainable development of society. In the world, associated with the process of formation and development, countries and ethnic groups all have their own custom to manage social life in their communities.

In Vietnam, under the feudal dynasties, besides the legal regulations promulgated by the State, custom always holds a significant position in regulating social relations, becoming a legal culture of a nation. In the current stage of development, in order to enhance the effectiveness of the State's social management, it is necessary to acknowledge the application of custom. The application of customs in the State's social management is not only an objective requirement, suitable to the country's historical, cultural, and socio-economic conditions, but also contributes to preserving the national identity and meeting the requirements of the establishment of a socialist rule of law and the trend of international integration.

However, the practice of applying customs in social management by competent entities still faces many difficulties and obstacles, reducing the effectiveness of the impact of customs in regulating social relations. The basic causes are as follows:

Firstly, the current legal system lacks the necessary provisions to ensure the feasibility of the application of custom; many current regulations on the application of customs are still general, unclear, and have not yet created an appropriate legal space for the application of customs in the State's social management;

Secondly, there is a lack of comprehensive and profound research projects, clarifying theoretical issues on the application of custom in the social management of the State, creating a theoretical foundation for the improvement of legal provisions on the application of customs in the social management of the State;

Thirdly, research, evaluation and review activities to establish lists of customs to create sources of application have not been fully implemented, so there is a lack of reference bases for activities to apply customs; the activities of summarizing and evaluating the customs that have been applied in practice by state agencies and other competent entities are not conducted much and if any, only within a narrow sector;

Fourthly, the awareness of the position, role and value of custom in social management as well as the understanding of the custom of the

competent actors to apply the custom is still limited. This leads to the apprehension of applying custom in the process of solving cases arising in daily life even though it is possible to apply custom according to competence.

The above basic reasons lead to the low effectiveness of the application of customs, and the role and values of customs have not been fully promoted in the social management of the State. In order for the application of customs in the State's social management to be highly effective, it is essential to have a system of scientific and synchronous solutions. However, at present, there are the small number of projects, especially the large research projects on theory and practice related to the application of custom in the social management of the State from the perspective of jurisprudence and they are not comprehensive. This raises the need to continue to conduct comprehensive and in-depth research on the application of customs in the State's social management in order to find specific and viable solutions that contribute to enhancing the effectiveness of the application of customs in the social management of the State in Vietnam in the coming time. That is the reason for choosing to research the topic: "***Applying customs in social management of the State in Vietnam today***".

2. Research purpose and mission

2.1. Research purpose

The purpose of the thesis is to clarify the basic theoretical issues of the application of customs in the State's social management as a basis for assessing the current state of legal regulations as well as the practice of applying customs in State's social management in Vietnam today. On that basis, the author raises the point of view and propose solutions to ensure the effectiveness of the application of customs in the social management of the State in Vietnam in the near future.

2.2. Research mission

First, the author will find out the research situation of the thesis topic, thereby evaluating the existing research results, and outlining the core issues that the thesis will focus on.

Second, the author will clarify the theoretical basis for the application of custom in the social management of the State. Specifically, the thesis clarifies: the concept of custom; the concept of applying custom in the social management of the State; explain the need to apply custom and factors affecting the application of custom in the social management of the State; determine the scope, cases, principles and processes of applying customs in the social management of the State.

Third, the author will analyze and evaluate the current situation of applying customs by competent actors in a number of specific fields, thereby, pointing out the causes of the achievements and limitations of the application of customs in social management of the State in Vietnam today.

Fourth, the author will evaluate the trend of applying customs in social management of the State in Vietnam in the coming time, thereby, proposing specific views and solutions to ensure the effectiveness of applying customs in social management of the State in Vietnam in the near future.

3. Research objects and scope

3.1. Research objects

The research object of the thesis is the application of customs in the social management of the State in Vietnam today, with related issues, that is: the theoretical basis for the application of customs in the social management of the State; the current state of Vietnamese law on the application of practices in the State's social management; the practice of applying customs in the State's social management in some fields in Vietnam today, the solutions to be taken to ensure the effectiveness of the application of customs in the social management of the State in Vietnam in the near future.

3.2. Research scope

* *About the content*: The thesis studies both theory and practice on the application of customs in the social management of the State in Vietnam. The concept of social management of the State in the thesis is approached in a broad sense, that is, the exercise of state power by competent actors. However, the thesis only focuses on studying the activities of subjects that are directly related to the application of custom when dealing with cases arising in social life.

* *About the space*: The scope of research on space is in Vietnam, however, the thesis focuses on the application of practices in social management of the State in key areas of the regions: Northwest, Central Highlands, Southwest.

* *About the time*: The scope related to the time of research is the application of customs in the social management of the State in Vietnam in the current period (research and evaluation focus on the actual situation of applying customs in settling cases of competent actors in the period from 2013 to present).

4. Research Methodology

The thesis is researched based on the theoretical and methodological basis of Marxist-Leninist philosophy of dialectical materialism and

historical materialism, Ho Chi Minh's Thought, the views of the Vietnamese Communist Party on the state and the law, and the build-up of the rule of law in Vietnam today.

In addition, the thesis is also conducted through the use of a combination of specific research methods such as:

- Methods of analysis, synthesis, history, comparison, logic, statistics to study theoretical issues, build concepts, draw comments and assessments.
- An interdisciplinary research method to learn and determine the concepts of custom as well as the ability to adjust the custom to all areas of life.
- Surveying and statistical methods to collect and process information on issues related to the assessment of the current situation of applying customs in social management of the State in Vietnam today.

5. New points of the thesis

Firstly, the thesis clarifies the concept of custom and the application of customs in the social management of the State under the perspective of general theory of the state and law,| points out the most typical features of these concepts.

Secondly, the thesis explains the need to apply customs, factors affecting the application of customs in the social management of the State in Vietnam today.

Thirdly, the thesis mentions and clarifies the most basic theoretical issues on the application of customs in the social management of the State such as: determining the criteria for choosing the applied customs; determining the scope, cases and principles of application of customs; develop the process of applying customs in the social management of the State.

Fourth, through the practical study of the application of customs in social management of the State in a specific field, the thesis deepens theoretical knowledge about the role and value of customs in social management, thereby deepening theoretical knowledge about the role and value of customs in social management, correctly determine the role and position of customs in the social management of the State in Vietnam today.

Fifth, the assessment of the thesis on legal regulations helps legislators and researchers clearly see the loopholes in the current legal regulations on the application of customa in the social management of the State. At the same time, the solutions proposed by the thesis will contribute to improve the legal provisions on the application of customs in the State's social management in particular and improve the effectiveness of the application of customs in the State's social management in general.

6. Theoretical and practical significance of the thesis

6.1. Theoretical significance

The research results of the thesis contribute to supplementing and perfecting the theoretical basis of customs and application of practices in the social management of the State.

6.2. Practical significance

The research results of the thesis can serve as a reference for legislators in the process of building and perfecting the legal system. At the same time, it is also a reference for practical activists in social management activities. The research results of the thesis can also be used as a reference for teaching, learning, and researching about customs and their application in social management of the State in particular and legal science in general

7. Structure of the thesis

In addition to the introduction, overview of the research, conclusions, list of references and appendices, the content of the thesis includes 3 chapters:

Chapter 1: Theoretical basis for the application of custom in the State's social management in Vietnam

Chapter 2: The legal status of the application of customs and the practice of applying customs in the State's social management in Vietnam today

Chapter 3: Perspectives and solutions to ensure effective application of customs in State’s social management in Vietnam in the coming time.

PART B. OVERVIEW OF THE RESEARCH SITUATION OF THESIS TOPIC

In order to identify research gaps and collect theoretical issues for the defense of the main point of the thesis, the author has studied many different works published in the country and abroad. Using statistical and categorical methods to classify studies into three groups, which are: i) theoretical studies on the application of custom in the social management of the State; ii) studies on the actual situation of applying customs in the social management of the State; iii) studies on solutions to ensure the effectiveness of the application of practices in the social management of the State.

1. Evaluation of the research situation of the thesis topic

Through studying the research projects of the thesis topic, it can be clearly seen that the custom and the application of the custom is a theme

that attracts research attention from many different angles and aspects. However, at present, there are no direct and comprehensive studies on the application of customs in the social management of the State. The problems of the thesis topic, though more or less mentioned in those studies, have not been fully clarified in terms of theory, current situation, viewpoints, and solutions to this problem. Summarizing the research situation of the thesis topic, some comments can be drawn as follows:

1.1. Theoretical issues on the application of custom in the State's social management

Existing studies have built up several basic theoretical issues on custom and application of custom such as: concept of custom, origin, nature, form of existence, role and value of custom; distinguish custom from other codes of conduct. A number of studies have built and analyzed the concept of applying custom, the need to apply custom in social management, and how to prove the existence of custom. In addition, a number of studies have presented principles, processes, and factors affecting the application of practice in certain fields. However, due to the angle and scope of the research, theoretically, the existing studies do not go into the analysis of each specific theoretical issue, but mainly present a basic and brief summary of some of related theoretical issues and has not yet built a sufficient theoretical basis for the application of customs in the social management of the State. Therefore, this is one of the missions set out for this thesis.

1.2. The current status of the application of customs in the State's social management

Studies have shown the inevitable existence and indispensable role of custom as an additional source of law in social management. A number of studies have made specific analyzes and assessments of the current situation of applying customs in certain fields or in certain localities, including illustrative evidence and survey data. However, also from the perspective and scope of research, most of the evaluations of major studies only assess the actual situation of applying customs in a certain field or locality, so they do not reflect the current situation. be aware of the current situation of applying customs in the social management of the State in Vietnam today. Therefore, the mission of the thesis is to have a general and comprehensive analysis and assessment of the current state of applying practices in social management of the State in Vietnam today.

1.3. Viewpoints and solutions to ensure the application of customs in the State's social management

The studies have provided views and solutions to ensure the effectiveness of customary application. However, with the articles, the solutions outlined are only suggestive and generalizing. Some research works such as monographs, reference books, doctoral theses, scientific research projects at ministerial and state level, although they have stated their views and built a system of methods to ensure the effectiveness of the application of custom, but only associated with certain areas or localities. Therefore, the solutions are not comprehensive, even some of the solutions mentioned are no longer appropriate and necessary. To ensure the effective application of practices in the State's social management in the coming time, it is necessary to have synchronous views and solutions on this issue.

It can be affirmed that the studies on customs in general and the application of customs in the social management of the State in particular have now achieved certain results that can be inherited in the thesis, so they are all useful references for the author in the process of conducting this thesis.

2. Issues that need further research in the thesis

After evaluating the research situation of the contents of the thesis, it can be seen that some of the contents of the topic are still open, or that some contents, although studied, are no longer topical or not comprehensive. Therefore, the thesis will focus on researching and clarifying those contents, specifically as follows:

Firstly, research to find out the connotation of the concept of applying custom in the social management of the State, from which, to draw out the definition and characteristics of the application of custom in the social management of the State.

Secondly, an overview study on the subject applying customs in the social management of the State to see the difference in the way of applying customs of each type of subject.

Third, interpret and clarify theoretical issues about criteria, selection and recognition of custom; scope, cases, principles and processes of applying customs in the social management of the State in Vietnam today.

Fourth, analyze and evaluate the current situation of applying customs in social management of the State in Vietnam today, pointing out the achievements and limitations of this situation, and determining the causes leading to that situation.

Fifth, point out views and propose specific solutions to enhance the effectiveness of the application of customs in the State's social management in Vietnam in the coming time.

3. Research hypothesis and research questions

3.1. Thesis research hypothesis

Applying customs in the State's social management in a number of specific fields in our country is still a necessity today and ensuring the effectiveness of the application of customs in the State's social management is also a must, even in the buil-up of a state governed by the rule of law. But to ensure the effectiveness of the application of customs in the social management of the State in our country today, it is indispensable to implement certain solutions.

3.2. Thesis research questions

Based on the clear definition of the research object and research purpose, the author poses the research questions, namely:

1/ What is the application of customs in the State's social management? Why do customs be applied? Who can apply custom and on what principles should their application be based?

2/ How has the application of customs in the social management of the State in our country been in recent years? What are the advantages and disadvantages? What causes this situation?

3/ What basic solutions should be taken to ensure the effective In the current conditions of building the rule of law in our country, is it necessary to continue to apply customs in the social management of the State? If so, what measures should be taken to be able to apply customs most effectively?

PART C. CONTENT OF CHAPTERS

Chapter 1.
THEORETICAL BASIS ON THE APPLICATION OF CUSTOMS IN SOCIAL MANAGEMENT OF THE STATE IN VIETNAM

1.1. The concept and the need to apply custom in the state's social management

1.1.1. The concept of custom

Custom is a term that can be understood in different ways depending on the angle of approach. After analyzing and clarifying the terms ‘custom’ and related terms, the thesis approaches the term ‘custom’ from the perspective of a type of social norm formed based on the behavior habits of a community, and certain areas of life.

Accordingly, it can be understood that: *A custom is a rule of conduct with clear content, formed based on the behavior habits of a certain community or field of life, existing and recognized as a rule of conduct to regulate social relations arising in that community or field of life.*

1.1.2. Concepts, subjects, and objects of social management of the State

1.1.2.1. The concept of social management of the State

Social management of the State is a term that can be understood in different broad and narrow meanings. In this study, the author inherits the existing viewpoints on the concept of management and social management of the State, and at the same time approach the term social management of the State in a broad sense. Accordingly, *State's social management is the influence of competent entities mainly by law so as to conduct organization activities and adjust the process of social development to maintain stability and development of society according to the defining goals of the State.*

1.1.2.2. Subjects and objects of social management of the State

In a state-owned society, the subject that plays the most important role in social management is the State. The state is the subject of direct and comprehensive management of society. Social management activities of the State are mainly and initially carried out by all state agencies, including all activities from the formulation and promulgation of laws to the implementation and protection of laws.

Along with state agencies, social management activities of the State can also be conducted by political organizations; communities and mass organizations when empowered by the State to perform the social management function.

The object of State management is all fields of social life, which are nothing but human beings with their relations to carry out the production and reproduction of material and spiritual values...

The social management system is a collection of social relations that are heterogeneous in nature and scope of activities. There are relationships that have a narrow range of activities and there are relationships that have a wide range of activities. This requires the subject to have corresponding effects, suitable for each relationship group.

1.1.3. The concept of applying custom in the State's social management

Applying customs in the State's social management is a part of law application activities, which can be understood as follow: *Applying customs in the State's social management is the activity of state agencies, individuals and organizations empowered by the State, based on customs consistent with the provisions of law and not contrary to social ethics in order to settle cases arising in social life according to their competence.*

1.1.4. The need to apply customs in social management of the State in Vietnam today

The need to apply customs in social management of the State in our country today is due to the five basic reasons as follow:

First, the historical, cultural, and socio-economic factors. Vietnam is an Eastern country, associated with the wet rice civilization, with the lifestyle of villages and hamlets, so the customs and practices were formed very early and are extremely rich and diverse. It can be said that the traditional customs of our country always have a miraculous vitality and always play the role of an effective and indispensable tool in social management, which is a factor that creates cultural characteristics in general and legal cultural identity of the nation in particular.

Second, the adjustment value of custom on social relations. The application of customs in social management not only contributes to the rational settlement of relations arising within communities, and preservation of the general order of society, but also creates a favorable environment in order for the law comes into life.

Third, international integration requirements. Most countries in the world today accept the diversification of sources of law, including custom. With the current trend of deepening international economic integration, the recognition and application of international trade customs is also an indispensable requirement in order to create adaptations for Vietnamese enterprises when participating in the international "playing field".

Fourth, the need to preserve and promote the cultural identity of the nation in the process of integration. A nation will no longer be itself if it loses its cultural identity. The recognition and application of the nation's progressive customs on the principle of respecting and complying with the law, in accordance with national ethics and traditions is essential to protect and enhance the cultural identity.

Fifth, the practical needs of national governance and the inadequacy of written law. With the richness and diversity, custom is an important supplementary source for the law, supporting and creating conditions for the law to perform its effective social management role.

1.2. Subjects, scope, cases, and principles of application of customs in the State's social management

1.2.1. Subjects applying customs in the State's social management

Applying customs in the social management of the State is an activity of state power. Therefore, the subjects who apply customs in the social management of the State are the competent actors. These subjects are quite diverse, with different scopes and methods of application depending on the functions and duties of each type of subject. In many fields, the subject who has the authority to apply the law is also the subject who has the authority to apply the custom.

1.2.2. Scope of application of customs in the State's social management

Regarding space of application: For domestic customs, the scope of application is where the custom has formed and existed. As for international custom, it can only become a source of law when it is recognized by national law or provided for by the concerned states in an international treaty or selected by the parties to the relationship, provided that the application and the consequences of such application do not contravene the fundamental principles of the law of the parties. When recognized and chosen to apply, international customs can regulate social relations within the territory of many countries.

Regarding the field of application: in Vietnam at present, there are no specific regulations on which areas are allowed to apply customs and which areas are not. However, through the provisions on the application of custom in the current legal system, it is evident that these provisions appear only in a number of legal documents governing civil relations in a wide sense.

1.2.3. Cases and principles of application of custom in the State's social management

In Vietnam today, the custom is basically applied when there is no legal regulation and the parties do not have an agreement. However, in some cases where the agreement of the parties is prioritized and the parties agree to choose to apply the custom, then, even if there is a provision of law, the custom will still prevail.

Based on the current legal provisions on the application of custom, it can be seen that the basic principles in the application of custom in social management in Vietnam today include:

First, the application of custom must be consistent with the basic principles of the law.

Second, apply only customs with clear origin and content.

Third, apply only customs that have become common, accepted by the community and still in existence at the time of application.

Fourth, apply only customs that express the cultural identity of the nation.

1.3. Selection and recognition of customs generating sources for application in the State's social management

1.3.1. Selecting customs generating sources for application in the State's social management

The selection and construction of a list of customs is the method of the State to determine the existence or non-existence of a customary rule in practice; screen a custom for whether it is appropriate or inappropriate to apply; assign legal attributes to the selected rules. In order to select an

appropriate custom to include in the list of applicable customs, the following basic issues need to be clearly defined:

First, identify the subject who has the authority to choose and create a list of customs.

Second, determine the existence and source of the custom.

Third, determine the criteria for the custom to be selected.

1.3.2. Recognizing customs generating sources for application in the State's social management

In Vietnam today, the recognition of custom as a source of law is done through law-making and law-application activities. Through law-making activities, custom is recognized as a source of law and allowed to be applied in the highest effective document, the Constitution, and concretized in other legal documents. In addition, the recognition of applied customs is also done through law application activities of competent entities.

1.4. The process of applying custom in solving cases

Today, the current regulations on the application of custom are not uniform. Basically, custom is applied in case where there is no provision by law. In other words, custom will have the order of application after the law. However, in some relationships, the agreement of the parties takes priority, whereby custom will have the order of priority applied before the law. Therefore, the process of applying custom will be different for each case.

For the case where the custom is applied when there is no provision of the law, the process of applying the custom will go through the following stages sequentially: (1) Analyze and evaluate properly and accurately the actual circumstances, situations, and conditions of the issue; (2) Select the appropriate regulation to apply; (3) Select the custom to apply to solve a specific case; (4) Make a decision to apply the law to solve the case; (5) Organize the implementation of the decision to apply the law that has been issued and has come into effect.

In case the agreement of the parties is prioritized, the process of applying custom, including: (1) Analyze and evaluate properly and accurately the actual circumstances, situations, and conditions of the issue; (2) Determining the content and suitability of the custom that the parties agree to choose; (3) Make a decision to apply the law to solve the case; (4) Organize the implementation of the decision to apply the law that has been issued and has come into effect.

1.5. Factors affecting the application of customs in social management of the State in Vietnam today

The application of customs in the State's social management is influenced by five basic factors, which are: (i) the policy and legal system; (ii) socio-economic conditions; (iii) cultural traditions, beliefs and religions; (iv) legal consciousness and customary understanding of the competent authorities; legal awareness and understanding of the customs of citizens.

Conclusion of Chapter 1

A custom is a type of norm that spontaneously forms in life, which is a creative product of social communities in the process of development in order to regulate social relations arising in that social community. The outstanding feature of a custom is that it is always associated with a certain social community, reflecting the specific conditions of the community where it forms and exists. The custom regulates many areas of life, so the content of the custom is extremely rich and diverse.

In Vietnam, the application of custom has a long history of formation and development over the periods, becoming a separate legal culture of the nation. Currently, along with the development of all aspects of life, the change of social relations, the perfection of the legal system, the influence of the custom is gradually narrowed, the role of of practices in the system of social management tools were also significantly reduced. However, this does not eliminate the need to apply custom in the social management of the State. Because custom not only contributes to compensate for the shortcomings of the law, but also can replace the adjustment by law in certain cases. In addition, custom also contributes to the implementation of the law in a more serious and self-conscious manner.

The custom formed and existed in the community spontaneously. The custom itself is not legal. It only become a source of law and legality when recognized and allowed to be applied by the State. The application of customs in the State's social management is essentially the application of behavioral rules formed from life recognized and guaranteed by the State. Applying customs in the social management of the State is an activity performed by competent entities. Accordingly, when there are cases arising in life, it is possible or necessary to apply customs, the competent entities will base on the customs existing in life which are in accordance with the provisions of law and not contrary to social ethics as a basis for settling such cases.

In order to ensure the feasibility of the application of custom, in addition to creating a clear and solid legal basis for this activity, it is also necessary to have a rich and appropriate source of custom for application. In Vietnam today, the existent customs are diverse, and widely applied by

citizens in daily life, especially in mountainous areas and ethnic minority areas. Most of the traditions handed down are those with progressive content, which is an important basis for the State to apply in social management. However, in fact, there are also customs that are no longer suitable for current life. Therefore, the application of customs in the social management of the State in Vietnam in the current period needs to be selected with appropriate content to apply.

Chapter 2.
LEGAL REGULATIONS ON THE APPLICATION OF CUSTOMS AND PRACTICAL APPLICATION OF CUSTOMS IN SOCIAL MANAGEMENT OF THE STATE IN VIETNAM TODAY

2.1. Legal regulations on the application of customs in the social management of the State in Vietnam and assessment

2.1.1. A brief history of legal regulations on the application of custom in the Vietnamese legal system

Through a brief history of legal regulations on the application of customs as a source of law in the Vietnamese legal system, it can be seen that custom has formed and existed throughout history, from the formation of our nation until now. Despite ups and downs, the custom has always proved its enduring value in social life.

During the feudal period, feudal dynasties, and colonial States had admitted the mutual existence of a customary law system in regulating social relations. Even the existence and rich development of the customary law system in each village has made it plays an important role in the social management of the State. In people's daily life, custom occupies a more crucial role than the law promulgated by the State. The regulations on the recognition and application of customary law in this era are also very diverse, ranging from principles on the recognition of customary application to the admission of its application in specific cases.

After 1945, our legal system continued to recognize the application of custom in the social management of the State. In the current legal system, the regulations on the application of custom are relatively complete and adequate. The custom is recognized in the 2013 Constitution of the Socialist Republic of Vietnam, concretized in other legal documents in the civil field such as the Civil Code 2015, the Civil Procedure Code 2015, the Law on Marriage and Family 2014, the Commercial Law 2005… The current regulations on the application of custom can be divided into three groups: (i) the regulations defining the custom, determining the principles, and the order of priority for application in the system of sources of law; (ii)

regulations referring to the application of custom in some specific cases but not mentioning the content of the custom; (iii) regulations about the application of custom in specific cases with specifying the content of the applied one.

2.1.2. Assessment of the current legal regulations on the application of customs in social management of the State in Vietnam today

2.1.2.1. Advantages

Firstly, at present, the recognition of custom as a source of law to regulate social relations is one of the guiding ideas of the Communist Party of Vietnam. This ideology has been institutionalized by the State into laws in the Constitution and other normative documents in the legal system.

Secondly, the current system of legal regulations on the application of custom in social management is quite comprehensive and relatively open, which is suitable for reality and the general development trend of the worldwide legal system. The permitted scope of a custom application is suitable to the nature of the custom as well as the actual socio-economic - cultural conditions of a country. The application of custom in business-commercial relations, marriage, and family with foreign elements is consistent with the common practice and development trend of the global legal system.

Thirdly, many regulations on the application of custom are relatively detailed.

Fourthly, there are regulations assigning responsibility to the State agencies in reviewing and making a category of practices to create sources for application.

2.1.2.2. Limitations

Firstly, some current regulations on applied practices are not consistent, clear, and strict.

Secondly, there is a lack of specific regulations to ensure feasibility and consistency in practical application such as regulations on criteria for determining selected practices; regulations on the process of applying customs when dealing with specific cases…

Thirdly, the lack of specific regulations on assigning responsibilities in the development and approval of custom lists leads to the shortage of categories to apply in practice.

2.2. Practical application of customs in social management of the State in some fields in Vietnam today and assessment

2.2.1. Practical application of customs in social management of the State in some fields in Vietnam today

2.2.1.1. Practical application of customs in civil status management of the People's Committee

In civil management activities, State agencies have applied the customs of ethnic groups to settle arising issues following legal regulations. However, in the procedure of certifying birth, marriage, divorce, guardianship, identification, and recognition of father, mother, and child, confirmation of the personal status of an individual, death declaration, etc., there are still some legal provisions that do not compatible with normal customs. This leads to difficulties and obstacles in practical application. Accordingly, the main problems are related to identification of surname and first name at birth; ethnic identification; birth registration time; civil status; marriage registration.

2.2 1.2. Practical application of custom in institutional mediation

Mediation at the institution is usually carried out in two forms: through a system of institutional mediation teams with State-recognized mediators; and through the institutions in the village, which are mainly village elders and reputable people in the community. In many local areas, there is no clear distinction between these two forms of mediation because the village elder and village head can both participate in mediation groups.

Local officials and mediators said that institutional mediation is often based on the existing customs in the community. However, mediation is not always based on specific practices. In many cases, the mediators will advise the disputing parties based on the friendship and good communal relationship between the people to resolve arguments. Some ethnic minority mediators rely on general rules, such as the Giay rule of “pó má peo, pó má láy” which means wrong things must be consequently adjudicated. In other cases, village elders or clan heads may also adopt specific practices to handle disputes. Once the mediation is completed, neither party is allowed to question the matter again; if the other party questions again, the penalty will be doubled.

2.2.1.3. Practical application of customs in the adjudication work of the Court

The application of custom in the adjudication work of the Court in recent years is not frequent; however, the number of judgments and decisions using customs in solving some specific issues of the cases is not that small and tends to increase.

Many judges believe that custom has a certain influence on adjudication activities. In adjudicating activities, judges also consciously learn the customs related to the case to consider and make an appropriate decision. However, the judges also found that the application of custom was

very complicated. The judges themselves do not have a consistent view on how to apply custom. On the one hand, the judges affirmed that it is necessary to rely on the provisions of the law when adjudicating to ensure the supremacy of the law. The practices applied must be under legal regulations. In some cases, if the custom is not in accordance with the provisions of law, the law must be applied. On the other hand, they also think that it is essential to consider the application of custom in the trial process to guarantee a reasonable judgment.

Based on analyzing specific cases, the author finds three factors affecting the practice of customary application in the trial of the Court, that is shortcomings from the legal regulations on the application of customary laws; the risk of judgments being corrected or canceled when the custom is applied; views and comprehension of the custom in the adjudication of judges.

2.2.2. Assessing the practice of applying customs in social management of the State in Vietnam today

2.2.2.1. Some achievements and reasons

** Some achievements*

Firstly, about the subject of a custom application. In general, competent authorities have implemented the application of custom in accordance with their competence.

Secondly, about the scope of application of custom. The application of custom in the settlement of cases arising in practice by competent entities shows that the custom is applied to solve relationships in many different fields but is generally consistent with the scope of application.

Thirdly, about the cases and principles of customary application. Practical application shows that cases of customary application all ensure compliance with regulations on cases and principles of application.

Fourthly, about the process of applying customs. During the application process, the competent entities must strictly follow the application process. In fact, there are a small number of cases where the application of custom by the competent entity does not receive the consent of relevant subjects, or the sentence relating to that custom is later canceled and corrected. The cause is not a violation of the applied order and procedures, but it is mainly due to a conflict of opinion related to the applied custom.

** The reasons for achievements*

Firstly, due to the precise orientation of the party in promoting the role of custom in the system of sources of law. From this direction, the

State has institutionalized it into specific regulations, creating a solid and suitable legal basis for the practice of applying customs.

Secondly, due to the significant growth in the number and competence of professionals and the professional skills of entities when applying the law in general and customary practices in particular.

Thirdly, due to deep understanding of the customs and the diversity of the customs throughout the country.

Fourthly, due to the achievements in legal scientific research activities, many theoretical issues have been clarified as a background for completing the legal regulations on the application of custom as well as the application of custom in reality.

2.2.2.2. Some limitations and reasons

** Some limitations*

Firstly, in fact, there are still many cases requiring to apply custom for settlement, but the competent actors are confused. So, they have ignored the application of the custom, making the customs unable to be promoted their roles and values.

Secondly, there is also a phenomenon of conflict of opinion in the application of custom between entities that have the competence to apply the custom, as well as related parties.

Thirdly, in some cases, the application of custom is still arbitrary, which makes the decisions and judgments issued not be guaranteed to be convincing.

** The reasons of limitations*

Firstly, the current regulations on application of customs still have shortcomings; many regulations are not specific and clear enough.

Secondly, there have not been many studies focusing on explaining theoretical issues, assessing the current situation and providing necessary solutions for the application of customs in the social management of the State.

Thirdly, the views, awareness, and understanding of customs of competent entities in the application of customs are not uniform and consistent.

Fourthly, the limitation of custom as they are often obsolete compared to social life. Customs exist mainly in unwritten form and many of them has distinctive versions, so it is difficult to determine the right content of the custom...

Conclusion of chapter 2

Through current situations of legal provisions on the application of custom, it can be seen that the laws regarding the application of custom in our country's legal system are now relatively open. This is very appropriate with the actual situation of our country as well as the general development trend of diversifying sources of law in the worldwide legal system.

Practical application also shows that the majority of competent subjects in their legal application activities are aware of the role and indispensable value of custom in solving problems arising from people's lives. To a certain extent, the custom has been respected and considered to be applied in solving specific cases.

However, the practice of applying customary laws of competent entities also illustrates that they have encountered many difficulties and obstacles in the process of resolving cases. This leads to many cases in which customary practices were not applied even though it could have been done to resolve cases. The main cause of the current difficulties and obstacles is that the regulations on the application of custom are not really clear, and specific and even some regulations are still rigid. There is also a lack of adequate theoretical and practical studies on the application of custom in social management for reference and assessment. In addition, the competent subjects are not knowledgeable enough about the custom and there is no consensus on the views about the application of customs among them… Therefore, the effectiveness of customary application in the social management of the State requires strategic views as well as systematic and consistent solutions.

Chapter 3.
PERSPECTIVES AND SOLUTIONS TO ENSURE EFFECTIVE APPLICATION OF CUSTOMS IN SOCIAL MANAGEMENT OF THE STATE IN VIETNAM IN THE FUTURE

3.1. Perspectives on applying customs in social management of the State in Vietnam in the coming time

Research aiming to improve the effectiveness of the application of customs in the State's social management in Vietnam in the future should consider the following points of view:

Firstly, the application of customs in the State's social management must be based on respect for the Constitution and the law, following the principles of building a rule-of-law state in our country.

Secondly, the application of customs in the social management of the State in Vietnam must aim at building and completing the legal system.

Thirdly, applying customs in the social management of the State must inherit and promote good traditional values of the nation, aiming to build an advanced culture imbued with national identity.

Fourthly, the application of customs in the State's social management must ensure respect and protection of the legitimate rights and interests of individuals and organizations participating in social relations and public order.

Fifthly, the application of customs in the State's social management must ensure equality and solidarity among ethnic groups, regions, and communities; promote democracy on a regulation basis.

3.2. Solutions to ensure effective application of customs in the State's social management in Vietnam in the coming time

3.2.1. Renew and unify the awareness of the role and value of custom in the State's social management

To ensure the effective application of customs in social management of the State, it is necessary to have innovation and consistency in awareness of the role and value of customs in social management in a more objective and comprehensive assessment of impacts in social life.

When applying custom as a source of law, it is necessary to have a consensus on specific features of this type of behavioral regulation to determine appropriate scope and situational application.

3.2.2. Promote research on theoretical issues on the application of custom in the State's social management

Currently, limitations from the theory and the application of customs in the State's social management are one of the basic causes leading to difficulties and obstacles in completing the legal provisions and in the process of applying the customs. To overcome this problem, it is necessary to promote research activities on theoretical issues about the application of custom in the social management of the State.

3.2.3. Complete the legal provisions on the application of custom in the State’s social management

When a custom is recognized by the State as a source of law, the application of it is the same as the application of the law. So, the application procedure needs to be strictly regulated for both convenient and systematic applications to avoid random situations. This issue requires improvement in regulations about customary law.

Developing and perfecting the current legal regulations on the application of customs in the social management of the State should follow the direction of creating a legally appropriate space for customs to be

applied in social management. The customs can only be promoted its role and value in social management when it is widely applied in social life.

3.2.4. Improve professional capacity and political qualities of entities competent to apply customs in the State's social management

One of the difficulties in applying the custom is the human factor. Custom is recognized as a source of law, but its effective application in practice depends greatly on the role of the authorities who have the competence to apply it. To ensure the effectiveness of the application of customs, it is necessary to improve the professional and political qualities of the subjects, including a team of staff doing administrative work in the local areas; a contingent of officers doing trial work; mediation teams in self-governing institutions empowered by the State.

3.2.5. Raise the people's legal awareness and understanding of customs and application of customs in the State's social management

In fact, in order to achieve the highest efficiency in the application of customs in the social management of the State, it is not only important to improve the professional and political qualities of the authorities but also to raise the legal consciousness and understanding of residents about customs and its application in the social management of the State. To do this, it is necessary to have particular propaganda, dissemination and legal education activities about the application of customs to the public, especially those in rural areas and ethnic minority areas.

3.2.6. Ensure the necessary financial resources and organize other activities to ensure the feasibility of applying customs in social management of the State.

In order to enhance the effectiveness of the application of customs in social management in the current period, the State needs to ensure essential financial resources for the synchronous implementation of activities for the application of customs.

In addition, it is necessary to organize other activities to guarantee the possibility of applying customs in the social management of the State. In particular:

Firstly, establish a custom advisory group in the village and a custom advisory council at the commune level to support the implementation of activities to review and gather local customs to build a list of customary practices. Plus, propagating traditional customs that have been included in the list of applicable customs.

Secondly, make a list and approve category of applicable customs. In order to be convenient for competent entities and for the people in applying

and referring customs in solving specific cases, it is necessary to promote the work of collecting and building a list of applied customs.

Thirdly, propagate the content of the approved custom to the entities that have the authority to apply the custom and to the people.

Fourthly, carry out inspection, supervision, reporting statistics on the results of the application of customs. The inspection and supervision should be done regularly to promptly detect, correct arising deficiencies and properly handle violations, if any.

Conclusion of chapter 3

To enhance the effectiveness of the application of customs in the social management of the State in Vietnam in the forthcoming time, first of all, it is necessary to properly perceive the viewpoints on the application of customs, considering these as indispensable principles to propose suitable solutions for the practice of social management. These points are: Applying customs in the social management of the State must be based on respect for the Constitution and the law, following the principles of building a State of law in our country; the application of traditions in the social management of the State in Vietnam must aim at building and perfecting the legal system; applying customs in the State's social management must inherit and promote the acceptable conventional values of the nation, aiming to build an advanced culture imbued with national identity; the application of customs in the social management of the State must ensure admiration and conservation of the legitimate rights and interests of individuals and organizations partaking in social relations and public order; the application of customs in the social management of the State must ensure equality and solidarity among ethnic groups, regions, regions, and communities; promote democracy on a regulation basis.

At present, the custom has been recognized as a source of law. In reality, it is relatively simple to recognize a source of law; however, ensuring legal and feasible recognition requires the involvement of the whole political system. It is not too difficult to put one or several regulations into legal documents. The problem of how to make that regulation useful is truly the difficult one. To enhance the effectiveness of the application of practices in social management and to realize relevant legal provisions on this issue, it is necessary to coordinate and synchronously implement many different solutions. Some basic and important solutions are: Researching relevant theoretical issues as the foundation for law building and perfecting activities, as well as removing obstacles in practical application; perfecting the current legal system in the

direction of more complete, specific, and synchronous regulations on the application of custom; training and educating to improve quality and skills in applying custom of competent officers... These solutions are closely related to each other, so it is impossible to attach importance to one solution only or to underestimate others.

CONCLUSION

Advancing the construction of the rule of law in our country is one of the important tasks in recent time. One of the requirements of the Rule of Law State is to have a comprehensive legal system with full criteria such as comprehensiveness; uniformity and synchronization; appropriateness and feasibility; high legal technical level. Being well aware of this, since defining the construction of the rule of law, our Party and State have made a lot of efforts to perfect the legal system. The number of legal documents is growing day by day. Documents with high legal value such as acts gradually replace sub-law documents like ordinances and decrees. The quality of legal documents is getting better and better. In general, the legal system has met the social management needs of a State developed under the rule of law model.

However, legal documents cannot recognize and regulate all social relations in all areas of life that the State needs to adjust. To compensate for the deficiencies of legal documents, the State has been executing solutions to diversify sources of law. Accordingly, the State has acknowledged the complementary sources of the law, including custom and case law. Legal norms identifying custom as a source of law and recognizing the application of custom in the State's social management have been promulgated in turn. Many disputes in seemingly deadlocked legal relations have now had a consistent legal background for resolution. The frequent application of custom in solving cases emerging in life by competent subjects has contributed to better protecting the legitimate rights and interests of subjects in society.

The practice of applying customs in the social management of the State, besides the achieved results, shows that many inadequacies have arisen. Shortcomings stem from many different objective and subjective reasons. First of all, because the current regulations on recognition and application of custom are not complete and transparent, the feasibility is low. In practice, the authorities still confront difficulties in determining customary rules due to the lack of criteria for customary selection. When applying, there is also a lack of consistency in determining the principles and procedures to be applied. Due to these reasons, in practice, some

decisions and judgments may be highly appreciated by public opinion, but some must be reviewed according to cassation and retrial procedures. The application of custom, in general, does not always achieve the desired outcome. In addition, in many cases, the competent authorities are not fully aware of the custom, so they do not dare or do not pay attention to the application of the custom even though it is permitted by the law to apply. There is even a view that the application of custom is unnecessary, impossible, and easily leads to arbitrariness... It also reduces the effectiveness of the application of the custom.

It is the above reasons that require a need to have a specific system of solutions to ensure the feasibility and effectiveness of the application of practices in the social management of the State in Vietnam in the coming time. These identified solutions include: Renew and unify the awareness of the position, role, and value of custom in social management; continue to extend and complete the current legal provisions on the application of practices in the social management of the State; further promote the collection and construction of a list of applied customs; elevate the role of village elders, village chiefs in the application of custom...

For the application of customs in the State's social management to become more effective, it is necessary to build a synchronous mechanism. Custom always needs to be identified as a source of law. This type of legal source will certainly still be needed in the State's social management activities. Society is always progressing and developing, and social relations therefore also vary; therefore, there are always situations that lack written laws to regulate despite the advancement of society. Moreover, no matter how developed the law is, there will always be social relations that do not need adjusting, because the customary norms themselves have performed this role very well. So, the State should focus on the job of acknowledging customs and ensuring the implementation of customs.

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