

Improvement of State Institution on Mineral Resources Management and Exploitation in Vietnam

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Abstract. Vietnam's mining industry has a long history with mines distributed throughout the country. It has contributed significantly to national economic growth. However, it also causes negative impacts on the environment, thereby affecting sustainable development and mineral resource management. Therefore, mineral resource management is one of the most critical tasks of state management. The factors that directly affect this issue are the institutional system and state management tools by the law. State institutions are an essential tool to regulate behaviors and establish social orders and disciplines in all fields, including mineral resources management. This article presents the current law on managing and exploiting mineral resources to provide orientations and solutions to improve the state institution on these activities in Vietnam. Based on clarifying the theory of state institutions and analyzing the current legal document systems in Viet Nam, the paper emphasizes the role of appraisal in improving the quality of legal documents and perfecting state institutions.

Keywords: State institution, Mineral resources management, Evaluation of legal documents, minerals, mining activities

1. Introduction

The institution is humanly devised constraints that structure political, economic, and social interactions [1]. State institution includes legal standards established by the state, forming a system of legal documents regulate and create acts and relationships among the state, individuals, and organizations to develop the social discipline. The institution provides a system of rules, principles, and laws [2] of state management. The state institutions have been studied in many fields [3] and different countries [4]. In Vietnam, the state institution on mineral resources management and exploration is a system of legal documents that regulate the behavior of management subjects and objects in the management and exploitation of minerals.

Over the years, the Vietnamese legal system and its quality requirements have been studied and analyzed from various angles [5, 6]. The authorities' responsibility is to ensure the legal document system's uniformity and consistency [7], in which authors studied the conditions and criteria [8, 9, 10, 11]. The solutions to improve the legal system are given to ensure sustainable development [12]. The requirements on feasibility [13] and solutions to enhance the feasibility of legal documents [14] are also studied and interpreted.

At the international, appraisal plays an essential role in improving legal documents' quality [15] and is an indispensable step in elaborating and promulgating legal documents [16, 17], such as in Russia [18], and France [19].

In this study, the article develops the role of appraisal in improving the quality of legal documents, developing criteria for assessing the quality of legal documents in Vietnam, creating a basis for perfecting the state regulation in mineral resources' management.

Vietnam has rich reserves of mineral ores. The exploitation of minerals brings high economic value. It causes specific impacts on the environment and climate change, creating problems for interest groups and giving rise to other complex issues in state management. Therefore, it is critical to managing the mineral resources' exploitation effectively. However, in recent years, mining activities mainly rely on manual and semi-mechanized methods, which has significantly impacted environmental degradation and ecological imbalance [20]. Besides, as investors aim to earn profits quickly, mining enterprises, primarily small and

medium sizes, only focus on exploiting export at the level of ores and concentrates. However, the Mineral Law has stipulated restrictions on the export of raw minerals, which leads to significant loss of resources, low economic value and efficiency, and waste of resources. Inadequate sanctions in policies and laws on mineral resources’ management and exploitation lead to violations of mineral management [21]. The level of transparency in the Vietnamese mining industry in 2017 ranks 45 out of 89 countries, from current policies and regulations on the tax system, financial reporting regimes, management process, licensing, level of state participation, and benefit-sharing methods [22]. To overcome the above shortcomings, improving state institutions is a crucial task and a top priority. The system of policies and laws is a requisite for publicity and transparency on mineral resources’ management and exploitation. The article builds a standard framework for assessing the quality of legal documents, the legal document system and using case studies and randomized controlled trials to improve the quality of the assessment of legal documents before promulgating.

2. Study areas

In Vietnam, the Ministry of Natural Resources and Environment (MONRE) is assigned the primary responsibility for managing and exploiting mineral resources [23]. In addition, the Ministry of Industry and Trade (MOIT) [24], the Ministry of Construction (MOC), and the Ministry of Finance (MOF) [25] jointly manage. The article studies the legal documents promulgated by the National Assembly, the government, MONRE, MOIT, and other competent entities regulating mineral resources’ management in Vietnam.

3. Methodology

The study examined 518 legal documents in force out of 988 promulgated by the National Assembly, the government, and ministries to regulate mineral resources’ management in Vietnam, focusing on evaluating documents issued from 2016 to 2020 with 130 legal documents. Sample documents were surveyed on the National Database of Legal Documents. Based on determining the characteristics of the samples, the authors designed a sampling mechanism with a layered sampling method, which is random sampling in a predetermined group. The appraisal document samples are classified by the issues and issuing agencies.

4. Criteria for assessing the legal documents’ quality

The legal documents’ quality is the achievement level of the draft legal documents according to each quality evaluation criterion of the proposed draft documents before promulgation [26]. This study builds a system of criteria for evaluating the quality of legal documents to improve the quality of legal documents in promulgating, as in Table 1:

Tab. 1. A standard framework for assessing the quality of draft legal documents.

No.	Criteria	Criteria components
1	The necessity of document	1) Objectives of document 2) To specify practical issues by documents or contents of assigned policies, laws to concretize 3) To list reasons for issues settled by documents 4) To see reasons for issues are settled by documents 5) To propose changes of issues when documents take effect
2	Governing subjects of document drafts	1) Subject groups governed by documents
3	Governing scope of document drafts	1) Scope governed by documents
4	Appropriateness of document draft contents with guidelines of the	1) To specify legal bases of documents 2) To specify laws, legal documents decrees containing contents that documents are responsible for concretizing

No.	Criteria	Criteria components
	Party and policies of the state	3) To specify contents of policies that legal documents are assigned to issue and implement policies 4) To specify documents assigned by the government to issue legal documents for implementing tasks assigned
5	A process on the compilation of document drafts	1) To consider whether document drafts are compiled under the prescribed process 2) Appropriateness of profession of document compiling units to contents of document drafts
6	Constitutionality and legality of document drafts	1) To determine whether document contents violate any article of the Constitution 2) To determine whether document contents are within contents of authority to issue documents
7	Consistency of document drafts with law system of Vietnam	1) System of documents with contents related to document drafts in order of legality and time 2) System of legal norms prescribing contents of legal normative document drafts.
8	Assessment of compatibility with related international treaties participated by the Socialist Republic of Vietnam	1) To specify international treaties related to contents of legal normative document drafts 2) To specify a relationship between international treaties and contents of legal normative document drafts.
9	Feasibility of document drafts	1) Content and appearance structure of documents for proving of document logicalness 2) Structure of norms: assumptions, regulations, sanctions 3) Logical diagram of documents 4) Assessment products show sufficiency and appropriateness on necessary financial resource conditions for assurance of document effect and effectiveness and other necessities for the actual implementation of documents. 5) To consider reports on document draft impact assessment, specify achievements and limits of reports on impact assessment, issues not specified or non-comprehensively specified by reports on impact assessment. <ul style="list-style-type: none"> + Time and location of impact assessment + Sequence of impact assessment + Method for impact assessment + Impact assessment documents + Subjects assessing impacts + Cost of impact assessment + Contents and structure of reports on impact assessment.
10	Effective period of documents	1) To determine whether the time that documents take effect changes or affect current activities.

No.	Criteria	Criteria components
		2) Subject groups affected by impacts of legal norms when documents officially take effect
11	Assessment of administrative procedures in document drafts (if any)	1) To determine whether appraisal products show feasibility and effectiveness of managerial procedures in document drafts (if any)
12	Integration of gender equality into legal documents	1) Beneficial subject group when records take effect 2) To make document drafts practical, to determine which subjects are responsible for deploying and implementing documents 3) Gender fairness in contributing opinions to drafts 4) Gender fairness in getting benefits of documents
13	Collection of opinions for document drafts	1) List of subjects, subject groups giving opinions 2) List of subjects, subject groups giving opinions and summary table of opinions of each topic and subject groups 3) Contribution opinions of related Ministries and departments 4) To assess documents on contribution opinion summary and documents on explanation and receipt of contribution opinions for document drafts 5) To consider issues with many opposite opinions ➔ Assessment results show sufficiency, authentication of opinions, and sufficiency of subject groups giving opinions
14	Assessment of document appearance	1) The appearance of documents complies with current legal provisions
15	Assessment of Vietnamese language standard in document drafts	1) Spelling mistakes 2) Word mistakes 3) Sentence mistakes 4) Punctuation mistakes

5. Quality of the legal documents’ institutional system on mineral resources’ management in Vietnam

5.1 Advantages

According to the Law on Minerals provisions in 2010, the system of agencies responsible for state management of minerals includes the government, MONRE, MOIT, MOC, MOF, People’s Committees at all levels [24]. The government performs the unified state management of minerals. MONRE is responsible to the government for achieving the state management of minerals nationwide, promulgating and organizing the implementation of legal documents on minerals, technical regulations, norms, and prices in geological exploration of minerals, and other tasks. MOIT and MOC are responsible for elaborating and submitting the planning on minerals assigned by the government, coordinating with MONRE in state management of minerals. People's Committees at all levels shall perform the tasks within their given competence.

In the past, elaborating and promulgating legal documents were carried out under the Law on Promulgation of Legal Documents in 2015 and Decree 34/2016/ND-CP. Depending on the form of legal documents and the competence to promulgate corresponding legal documents, each type of legal document has the order and promulgating procedures that are different and implemented following current law provisions. In recent years, building and perfecting institutions and laws on mineral resources’ management and exploitation have been a workload with more complex contents and policies. However, the promulgated

legal documents confirm their necessity, clarifying the subject matter of regulation and the draft document's scope, ensuring compliance with the development and issuance of documents (Criteria 1, 2, 3, 5).

In 518 legal documents regulating the management and exploitation of minerals, MONRE issued 258 as in Table 2 [25]:

Tab. 2. Number of legal documents promulgated from 2016 to 2020.

No	Type of legal document	Number of legal documents for 2016 – 2020	Number of legal documents in 2020
1	Law	02	01
2	Resolution	01	01
3	Decree	29	07
4	Decision	11	04
5	Circular, Joint-Circular	215	17
Total		258	30

Following the Law on Minerals in 2010, many legal documents and normative legal documents have been promulgated by the National Assembly, the Government and competent ministries to direct and administer mineral resources' management. MONRE has submitted the Law on Surveying and Mapping (2018) and the Law on Environmental Protection (2020) to the National Assembly. These two important laws contribute to perfecting the state institutional system on mineral resources' management and exploitation. Other documents detailing and guiding the management and exploitation of natural resources, including mineral resources, are also actively developed. The Law on Minerals has strengthened the decentralization of state management for the local authorities to grant licenses for mineral exploration, exploitation, and processing. The promulgated documents are consistent with the Party's guidelines and policies and the state's policies and laws on mineral resources' management (Criteria 4).

The provisions of the law on administrative procedures and business investment conditions in natural resources are also amended and perfected. Contradictory, overlapping, inconsistent, and unsuitable regulations are handled and resolved gradually. Notably, Decree No. 158/2016/ND-CP has been a critical legal basis in geology and minerals. It contributes to solving the shortcomings and inadequacies in mineral resources' management in a fundamental, comprehensive, and relatively radical way, removing difficulties and obstacles in implementing the Law on Minerals [27]. It also creates favorable conditions for enterprises when participating in mineral activities such as obtaining mining license documents, exploration permissions, etc., in a clear, transparent, and convenient way. Moreover, it clarifies the responsibilities of relevant subjects in appraising dossiers, organizations, and individuals applying for mineral activity licenses when participating in the editing, supplementing, and completing documents. The regulations on the auction of mineral exploration rights and mining rights are added to enhance the initiative and self-responsibility of organizations and individuals in mineral activities. The administrative procedures in the draft document are increasingly being improved to be convenient for people and enterprises (Criteria 11).

The results of the legal dictionary on minerals, chaired by MONRE, and coordinated with the ministries and branches, determined that there are 86 documents relevant to mineral activities [28]. The constitutionality, legitimacy, consistency of draft legal documents with the Vietnamese legal system, and compatibility with applicable international treaties are increasingly guaranteed (Criteria 6, 7, 8).

Recently, many policies and legal regulations on mineral activities have focused on developing and perfecting. The draft legal documents and projects on mineral resources' management are built, focusing on the active participation of experts, scientists, and managers, ensuring that documents must meet the criteria of uniformity, consistency, feasibility, publicity, and transparency when promulgated. The system of legal documents is regularly reviewed and published a list of legal documents that have expired or ceased to be effective in whole or in part (Criteria 10). In addition, the criteria for mainstreaming gender equality in the draft legal documents (if any), collecting comments on the draft documents, its format, and the standardization of Vietnamese language in the draft document (Criteria 12, 13, 14, 15) is also increasingly

improved. Formulating and perfecting policies and laws on mineral activities have achieved specific results, removing obstacles and barriers from practice, promoting the mineral resources, contributing to environmental protection in sustainable socio-economic development. The legal documents' system is increasingly improved in quantity and quality, creating a reasonably complete and strict legal framework.

5.2. Limitations

The construction and improvement of legal institutions still pose some problems, especially assessing the feasibility of the draft document (Criteria 9). Issues of legal regulations, inadequacies in practice, lack of synchronization and connection remain. The harmonization of interests among the states, localities, businesses, and communities is also a challenge with the current system of legal regulations. Continue to improve legal documents' quality, feasibility, stability, and longevity to create stability and order in mineral resources' management.

Besides, some legal documents, technical regulations, and rules are issued postponed in promulgation, such as the Law on Minerals and other guidance Decrees. Some contents have also been stipulated in the Law on Minerals but have been slow to be promulgated, such as regulations on bidding for mineral exploration and exploitation, regulations on procedures for state capital allocation, tax on the transfer of exploration rights, rights mining excavation.

The current regulations of the legal system are not powerful. Mining rights and mining licenses become prominent issues regarding fee collection, as the sanctions are not sufficient. It also takes time to receive and appraise mineral mining licenses. The local authorities have not yet strictly implemented the current regulations on mineral exploitation. Some mines have been licensed by the locality but do not carry out mining. There are still illegal mining, over-exploitation, and mining beyond the licensed area.

The existing sanctions to deal with violations in mining activities are not sufficiently strong, slowly implemented, and do not match the reality conditions. For example, the price bracket for calculating natural resource tax for some minerals promulgated in Circular No. 44/2017/TT-BTC of the Ministry of Finance is inappropriate, causing problems in collecting mineral mining rights of previously exploited reserves.

The master plan of mineral exploration and mining areas is not synchronized, bringing difficulties for extractive companies, affecting the auction progress of mineral exploration and mining rights by the current Mineral Law.

Surveying, summarizing, and assessing data help to form the quality of legal normative document drafts as in Fig. 1.

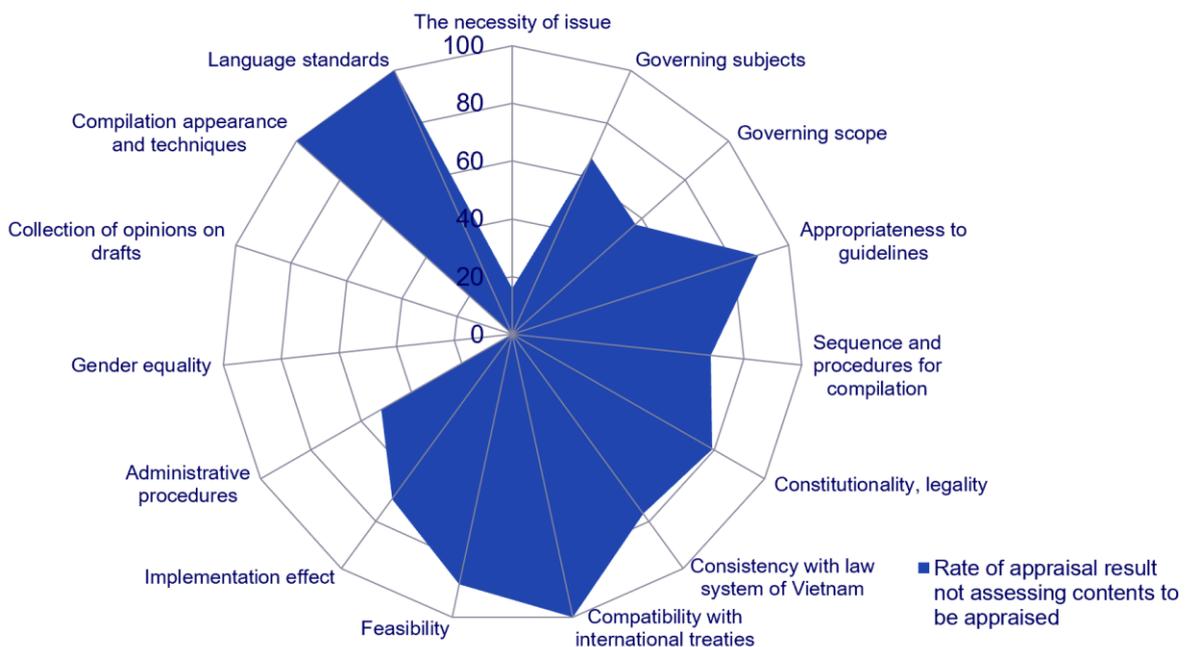


Fig. 1. Assessment quality of normative legal documents (Via 130 surveyed samples).

The inadequacies of the current legal system on mineral resources' management and exploitation are for many reasons, affecting the effectiveness and efficiency of the legal system. One of the reasons is that the appraisal of documents has not yet been promoted.

6. Conclusions

The system of legal documents and its quality is an essential factor in any state institution. The regulations on the form, authority to issue documents, orders, and procedures for the development and issuance of documents are increasingly complete in Viet Nam nowadays. The activities to evaluate documents before and after promulgation are gradually focused on implementation. In this process, the document appraisal is a pre-examination activity, which can detect unreasonable issues that need to be better. The appraisal activities with practical methods and tools will improve the quality of legal documents, perfecting state institutions in various fields, including management and mining of mineral resources.

An appraisal is a helpful tool to evaluate and improve the quality of legal documents when promulgating, avoiding overlapping regulations, significantly contribute to perfecting state institutions in various fields, especially the mineral sector in Vietnam today. Based on clarifying the theory of state institutions, the role of appraisal in improving the quality of legal documents and perfecting state institutions, analyzing the current situation of legal document systems.

The result of this research will contribute to perfecting and recommendations for improving the quality of Vietnam's state institutions on the management and exploitation of mineral resources in particular and the entire Vietnamese institutional system in general.

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