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## Articles

### REGULATING CYBERSPACE IN VIETNAM: ENTRY, STRUGGLE, AND GAIN

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*This study explores the evolution of cyber regulation in Vietnam since its inception, that is from the events of January 1997, when cyberspace first arrived in Vietnam, to the momentous protests instigated by the Cybersecurity Draft Law in June 2018. A Vietnamese cyber regulatory regime is imagined as an analytically constructed regulatory space where different actors enter, struggle, and gain in their pursuit of regulatory interests. The study argues that cyberspace in contemporary Vietnam has aided non-state actors to participate in the law-making and regulatory processes by inducing state actors to respond with cyber laws, regulatory approaches, and measures. Moving beyond the dichotomy of cyberspace as an inevitable tool for liberation or oppression, Vietnamese cyberspace has been both an instrument for non-state actors to participate in lawmaking, and a regulatory measure for state actors to regain control. A sociological landscape in contemporary Vietnam is depicted through the evolution of a Vietnamese cyber regulatory regime, shaped by dynamic interactions between domestic actors. In sharp contrast to the previous image of an authoritarian Vietnam, cyberspace has aided contemporary Vietnam to metamorphose into a more pluralistic society where organically formed social actors co-regulate cyberspace.*

**Keywords:** Contemporary Vietnam, Cyber regulation, Cyber law, Regulatory actors, Co-regulation, Power struggle, Historical timing

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## INTRODUCTION

At the fifth session of the 14th National Assembly in June 2018, the National Assembly of Vietnam released eight draft laws, one of which was the Cybersecurity Draft Law.<sup>1</sup> The draft law was met with great controversy and opposition from domestic groups.<sup>2</sup> It instigated the Vietnamese people to use Facebook and other social media platforms to express their opposing views. A petition that attracted more than 65,000 signatures, and street protests in more than ten cities, where tens of thousands of people took to the streets.<sup>3</sup> Opposition included rare dissents from lawmakers, government leaders, and business groups, who wrote and sent letters warning the National Assembly that this Draft Law would damage Vietnam's flourishing information technology economy.<sup>4</sup> Some commentators suggested that this may have been the biggest opposition event in contemporary Vietnam since the country's reunification in 1975.<sup>5</sup> The National Assembly delayed passage of the Cybersecurity Draft Law, made major reforms, and enacted the Law on Cybersecurity in January 2019.<sup>6</sup> The event demonstrated the emerging role of non-state actors in the process of lawmaking in contemporary Vietnam. The question that remains is whether and to what extent these non-state actors, who participated in opposing the Draft Law, have succeeded in inducing reforms that align with their interests.

The crux of this question suggests a larger question of whether and to what extent cyberspace has facilitated changes in Vietnam in ways that enabled non-state actors to achieve more meaningful participation in the lawmaking and regulatory processes. This study argues that cyberspace has aided non-state actors to participate in the lawmaking and regulatory processes by inducing state actors to

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<sup>1</sup> Thi Mai Phuong Cao, *National Assembly to pass eight laws at the fifth session*, VIETNAM LAW MAGAZINE, June 9, 2018, at 1–10, <https://vietnamlawmagazine.vn/national-assembly-to-pass-eight-laws-at-fifth-session-6252.html>.

<sup>2</sup> Giang Nguyen-Thu, *Vietnamese media going social: Connectivism, collectivism, and conservatism*, 77 J. ASIAN STUD. 895–908 (2018).

<sup>3</sup> *Id.*

<sup>4</sup> Nguyen Dieu Tu Uyen & John Boudreau, *Vietnam Parliament Passes Cyber Law Denounced in Street Protests*, THE SYDNEY MORNING HERALD, January 5, 2018, at 1–3, <https://www.bloomberg.com/news/articles/2018-06-12/vietnam-parliament-passes-cyber-law-denounced-in-street-protests>.

<sup>5</sup> Nikkei, *Vietnam's cybersecurity law sparks concerns from businesses*, NIKKEI ASIA (2018), <https://asia.nikkei.com/Politics/Vietnam-s-cybersecurity-law-sparks-concerns-from-businesses>.

<sup>6</sup> Thoi Nguyen, *Vietnam's Controversial Cybersecurity Law Spells Tough Times for Activists*, THE DIPLOMAT, January 4, 2019, at 1–5, <https://thediplomat.com/2019/01/vietnams-controversial-cybersecurity-law-spells-tough-times-for-activists/> 1/5.

respond with cyber laws, regulatory approaches, and related measures. Non-state actors have wielded the cyberspace platform, allowing them to hold discussions and disseminate information, mobilise opposition to Vietnamese cyber regulation, and express their preferences on cyber regulation. These activities succeeded to different degrees, inducing Vietnamese state actors to respond with three distinctive regulatory measures in three different periods. In the first period, which spanned from 1997 to 2007, state actors adopted the development-as-regulation approach in response to challenges from private business actors. During the second period, which spanned from 2008 to 2017, state actors adopted the censorship-as-regulation approach in response to the opposition of activist actors. During the third period, from 2018 onward, state actors adopted the surveillance-as-regulation approach in response to the collective opposition of non-state and hybrid actors in the event of large-scale opposition in June 2018.

The nature of this question challenges the image of an authoritarian Vietnam, where state-society relations were strictly autocratic and enduring, even under unprecedented, forceful, and dynamic social conditions.<sup>7</sup> In conjunction with the economic boom and rapid modernisation, the Doi Moi policy, implemented by the Communist Party of Vietnam in 1986, has disseminated cyberspace technologies to the Vietnamese population.<sup>8</sup> The consequence is an unprecedented social condition, where for the first time Vietnamese people can connect to the global internet and social media.<sup>9</sup> It cannot be assumed that the previous findings of Vietnam as an authoritarian society, under strict autocratic state-society relations, simply persevered untouched in such social conditions.<sup>10</sup> More importantly, it cannot be assumed that the cyber regulatory regime of Vietnam is entirely the making of the Vietnamese state monopolising legislation and regulation. It is necessary to ask whether and to what extent the technologies of cyberspace have enabled new socio-legal conditions, as well as non-state actors' participation in the regulation of cyberspace in contemporary Vietnam. The exploration of this question will provide a sociological landscape of contemporary Vietnam by analysing the ways in which interactions and relations between state and non-state actors have shaped the Vietnamese cyber regulatory regime.

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<sup>7</sup> Greg Lockhart, *Vietnam: Democracy and Democratization*, 17 *ASIAN STUD. REV.* 135–142 (1993).

<sup>8</sup> Björn Surborg, *On-line with the people in line: Internet development and flexible control of the net in Vietnam*, 39 *GEOFORUM* 344–357, 347 (2008).

<sup>9</sup> Thiem Hai Bui, *The influence of social media in Vietnam's elite politics*, 35 *J. CURR. SOUTHEAST ASIAN AFF.* 89–111, 90 (2016).

<sup>10</sup> Lockhart, *supra* note 7.

This study adopted a framework of regulatory space theory to discursively analyse legislation, regulations, and domestic discourse related to laws and regulation surrounding cyberspace in Vietnam. Regulatory space theory provides a useful framework to simultaneously analyse continuities and changes in the Vietnamese regulatory regime over three periods of time, and to investigate the interactive co-regulation of state, non-state, and hybrid actors. The theory offers a concept of a “regulatory space,” which is an analytically constructed arena where state, non-state, and hybrid actors variously compete and cooperate to engender outcomes and behaviours. It also offers the concept of “institutional dynamics,” which can be used to analyse the extent to which social conditions contributed to the shaping of the Vietnamese cyber regulatory regime over three time periods. Undoubtedly, rarely are there clear lines demarcating the end of one period and the beginning of another. The periodisation presented in this study functions as a descriptive instrument to discuss shifting socio-legal conditions that shaped relationships between domestic actors and the legislation, regulatory measures, and approaches induced by state actors. Each of the approaches to Vietnamese cyber regulation was determined by a distinctive set of regulatory issues, the choice of instruments in addressing those issues, and regulatory objectives declared by state actors during each period. These three periods will be detailed in three parts following discussions of the literature review and research framework.

#### I. THE DICHOTOMY BETWEEN VIETNAMESE STATE AND NON-STATE ACTORS

The sociological impacts of cyberspace upon Vietnamese society have received great scholarly interest since Vietnam connected to the global internet in January 1997.<sup>11</sup> As the internet was only available to government and research agencies, the early literature primarily examined regulatory methods and technologies the Vietnamese government used to control cyberspace.<sup>12</sup> These studies identified several regulatory methods employed by the Vietnamese government to limit public internet access, such as mandating high prices for internet uses, enforcing user registration with authorities,

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<sup>11</sup> VIETNAM INTERNET NETWORK INFORMATION CENTER, *Vietnam Internet Resources 2013*, 2013 VIETNAM INTERNET NETWORK INFORMATION CENTRE 56 (2013),

[https://www.vnnic.vn/sites/default/files/tailieu/whitebookfinal\(versionE\).pdf](https://www.vnnic.vn/sites/default/files/tailieu/whitebookfinal(versionE).pdf).

<sup>12</sup> Kenneth S. Rogerson & G. Dale Thomas, *Internet Regulation Process Model: The Effect of Societies, Communities, and Governments*, 15 *POLIT. COMMUN.* 427–444 (1998); LAWRENCE LESSIG, *CODE AND OTHER LAWS OF CYBERSPACE* 189 (1999); PETER FRANCIS, PAMELA DAVIES & VICTOR JUPP, *POLICING FUTURES: THE POLICE, LAW ENFORCEMENT AND THE TWENTY-FIRST CENTURY* 219 (1997); Loong Wong, *The Internet and Social Change in Asia*, 13 *PEACE REV.* 381–387 (2001).

and technological measures such as firewalls, content filters, and gateway restrictions.<sup>13</sup> Other studies examined the effects of these regulatory methods on Vietnamese society by making inferences from observations of countries such as China, Singapore, Myanmar, Thailand.<sup>14</sup> They inferred that cyberspace in the early days promptly played a key political role in Vietnamese society as it was becoming an arena of intensified struggle between the Vietnamese government and Vietnamese activists.<sup>15</sup> On the one hand, the Vietnamese government sought to use cyberspace to build ties with the global world, facilitate economic gains, and further political control.<sup>16</sup> On the other hand, Vietnamese activists used cyberspace technologies to access new information and mobilise people for collective action.<sup>17</sup> These early inferences predisposed a dichotomy between the regulatory interests of Vietnamese government actors and Vietnamese activist actors with regard to cyberspace.

When the internet became increasingly accessible to the Vietnamese population in the late 2000s, scholarly interest in the political potential of cyberspace began to burgeon and solidified the dichotomy between the regulatory interests of state and non-state actors. Studies interested in Vietnamese state actors focused on the formal aspects of cyber regulation enacted by state actors, including cyber laws, policies, and technical measures.<sup>18</sup> These studies typically

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<sup>13</sup> Rogerson and Thomas, *supra* note 12; FRANCIS, DAVIES, AND JUPP, *supra* note 12; Wong, *supra* note 12.

<sup>14</sup> Thomas Cochrane, *Law of Nations in Cyberspace: Fashioning a Cause of Action for the Suppression of Human Rights Reports on the Internet*, 4 MICHIGAN TELECOMMUN. TECHNOL. LAW REV. 157–194, 160 (1998); David S. Wall, *Catching Cybercriminals: Policing the Internet*, 12 INT. REV. LAW, COMPUT. TECHNOL. 201–218, 207 (1998); Marc Caden & Stephanie Lucas, *Accidents On the Information Superhighway: On-Line Liability And Regulation*, 2 RICHMOND J. LAW TECHNOL. 3 (1996); NATIONAL COUNCIL FOR CIVIL LIBERTIES, *LIBERATING CYBERSPACE: CIVIL LIBERTIES, HUMAN RIGHTS & THE INTERNET* 72 (Pluto Press ed., 1999); Nina Hachigian, *The internet and power in one-party East Asian states*, 25 WASH. Q. 41–58 (2002).

<sup>15</sup> Cochrane, *supra* note 14 at 160; Caden and Lucas, *supra* note 14 at 16–17.

<sup>16</sup> Caden and Lucas, *supra* note 14 at 17.

<sup>17</sup> James Gomez, *Dumbing down democracy: Trends in internet regulation, surveillance and control in Asia*, 10 PACIFIC JOURNAL. REV. 130–150, 134 (2004).

<sup>18</sup> Hai Luong, Huy Phan & Dung Chu, *Cybercrime in Legislative Perspectives: a Comparative Analysis Between the Budapest Convention and Vietnam Regulations*, 10 INT. J. ADV. RES. COMPUT. SCI. 1–12 (2019); Hai Thanh Luong et al., *Understanding cybercrimes in Vietnam: From leading-point provisions to legislative system and law enforcement*, 13 INT. J. CYBER CRIMINOL. 290–308 (2019); Candice Trần Dai, *La cybersécurité au Viêt Nam: Formulation et mise en œuvre d'une nouvelle stratégie*, HERODOTE 126–140 (2015); Trong Van Nguyen, Tung Vu Truong & Cuong Kien Lai, *Legal challenges to combating cybercrime: An approach from Vietnam*, CRIME, LAW SOC. CHANG. (2021), <https://doi.org/10.1007/s10611->

employed doctrinal and comparative legal analyses to determine the sufficiency and effectiveness of laws, policies, and regulatory measures adopted by the Vietnamese state.<sup>19</sup> They compared Vietnamese laws and the regulation of cyberspace with cyber laws and the regulation of other East Asian countries and international bodies. These comparisons, conducted by academics in Vietnam, also sought to provide recommendations for reforming Vietnamese cyber laws and regulation in order to meet international standards and objectives.<sup>20</sup> Adopting doctrinal methods, these studies focused almost exclusively on the regulatory interests and objectives of the Vietnamese state. They approached Vietnamese cyber regulation based upon an assumption that cyber laws and regulations in Vietnam were exclusively the creation of Vietnamese lawmakers, identifying issues on cyberspace, setting regulatory objectives, and codifying solutions through laws and regulations.<sup>21</sup> Their findings fall short in accounting for extra-legal constituents—such as the ways social norms, interpretations of regulatory standards by non-state actors, and compliance by non-state actors or the lack thereof—shaped the application of cyber laws, policies, and regulations.

Studies adopting the second approach filled this gap by examining impacts of cyber laws and regulations on Vietnamese society and the role of non-state actors in shaping these laws and regulations.<sup>22</sup> These rich studies adopted a diverse range of sociological and socio-legal methods, such as discourse analysis, social media studies, and content analysis.

They also identified the emerging formation of social groups and “pluralism in Vietnamese politics and society,” brought about by burgeoning internet usage in Vietnam, expanding cyberspace, and the proliferation of social media.<sup>23</sup> Several recent studies have highlighted the increasing participation of non-state actors in the creation of cyber

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021-09986-7; Trong Van Nguyen, *Cybercrime in Vietnam: An analysis based on routine activity theory*, 14 INT. J. CYBER CRIMINOL. 156–173 (2020).

<sup>19</sup> Luong, Phan, and Chu, *supra* note 18; Jirapon Sunkpho, Sarawut Ramjan & Chaiwat Ottamakorn, *Cybersecurity Policy in ASEAN Countries*, INF. INST. CONF. 8 (2018),

[https://www.researchgate.net/publication/324106226\\_Cybersecurity\\_Policy\\_in\\_ASEAN\\_Countries](https://www.researchgate.net/publication/324106226_Cybersecurity_Policy_in_ASEAN_Countries).

<sup>20</sup> Luong, Phan, and Chu, *supra* note 18; Luong et al., *supra* note 18.

<sup>21</sup> Luong, Phan, and Chu, *supra* note 18; Dai, *supra* note 18.

<sup>22</sup> Björn Surborg, *Is it the ‘development of underdevelopment’ all over again? internet development in Vietnam*, 6 GLOBALIZATIONS 225–247 (2009); Nguyen-Thu, *supra* note 2; Le Thu Mach & Chris Nash, *Social Media Versus Traditional Vietnamese Journalism and Social Power Structures*, 2 ASIAN J. JOURNAL. MEDIA STUD. 1–14 (2019); Bui, *supra* note 9; Mai Duong, *The formation of network society in Vietnam: Promise or peril?*, 6 ASIASCAPES DIGIT. ASIA 17–34 (2019).

<sup>23</sup> Mach and Nash, *supra* note 22, at 3.

laws and regulations in Vietnam.<sup>24</sup> These studies primarily focused on decentring cyber laws and regulations from Vietnamese state actors and sought to explore the possibility that non-state actors could achieve their cyber regulatory interests and objectives. As such, they reinforced the assumed dichotomy previously discussed, situating non-state actors in adverse positions with state actors as they focused solely on examining the extent to which non-state actors can achieve social changes to cyberspace, as well as policy changes to Vietnamese cyber laws and regulations.

The dichotomy of regulatory interests between Vietnamese state and non-state actors deepened as scholarly interest grew. As demonstrated, it led to two separate bodies of literature, both of which situate Vietnamese state and non-state actors in adverse positions with opposing regulatory interests. Consequently, they either examined the extent to which cyber laws and regulations can achieve a state's regulatory interests, or the extent to which cyberspace can aid non-state actors in forming civil societies and reforming state laws and regulations. Undoubtedly, state and non-state actors in Vietnam often struggle politically, and they embody different regulatory interests related to cyberspace.<sup>25</sup> Yet, this assumed dichotomy led to the neglect of arenas in which shared interests, negotiations, and interactions between state, non-state, and hybrid actors occur. For example, the cyberspace boom in Vietnam has precipitated cybercrimes—such as privacy violations, defamation, and fake news—which became increasingly prevalent issues for both the state, the people, and business actors.<sup>26</sup> Yet, these arenas have been severely understudied, as existing studies have focused on cyberspace in Vietnam through a dichotomous lens, failing to account for the possibility of interactions between state, non-state, and hybrid actors. It also led to the lack of a holistic, integrated examination of the Vietnamese cyber regulatory regime since its establishment. To date, no studies have provided a holistic overview of the Vietnamese cyber regulatory regime, with all its relevant actors. This study fills the gap by focusing on two overlooked aspects of the Vietnamese cyber regulatory regime, namely, the ways in which different domestic actors have shaped the Vietnamese cyber regulatory regime and the continued and changed

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<sup>24</sup> Jason Morris-jung, *Vietnam's Online Petition Movement*, SOUTHEAST ASIAN AFF. 402, 402–15 (2015); MICHAEL L. GRAY, CONTROL AND DISSENT IN VIETNAM'S ONLINE WORLD (2015), <https://secdev-foundation.org/wp-content/uploads/2015/02/Vietnam.ControlandDissent.Feb15.pdf>; Bui, *supra* note 9, at 108.

<sup>25</sup> Surborg, *supra* note 22, at 244.

<sup>26</sup> Dao Trong Khoi, *Improving Vietnamese law on the pre-action collection of evidence of law violations in cyberspace* O, 6 SCI. TECHNOL. DEV. J. 2175, 2175–82 (2021).

socio-legal conditions facilitated by cyberspace over different time periods.

## II. RESEARCH FRAMEWORK

This study asks three key research questions.

1. How has cyberspace generated socio-legal conditions that constructed and shaped a cyber regulatory regime in Vietnam?
2. How has cyberspace influenced the ability of state, non-state, and hybrid actors in Vietnam to shape laws and regulations?
3. What are the methods and mechanisms employed by state, non-state, and hybrid actors in Vietnam to shape the Vietnamese cyber regulatory regime?

The study has two key objectives. The first is to analyse the continuities and changes in the socio-legal conditions in Vietnam facilitated by the arrival of cyberspace since its inception in Vietnam in 1997. The second is to analyse the methods and the mechanisms employed—as well as the extent of influence obtained by domestic actors in Vietnam—in shaping the cyber regulatory regime. These two objectives are best achieved by a theoretical framework supported by the regulatory space theory. The regulatory space theory provides a useful framework to simultaneously identify the continuities and changes in socio-legal conditions, to identify regulatory methods and mechanisms, and to analyse interactions between state, non-state, and hybrid actors.

### *A. Regulatory Space Theory*

The regulatory space theory was first elaborated by economic regulation scholars Leigh Hancher and Michael Moran.<sup>27</sup> Hancher and Moran emphasized the need for regulation studies to account for regulatory sources beyond authorities, and yet new theories necessarily decentre the analysis without removing the key role of authorities.<sup>28</sup> The regulatory space theory accomplishes this through the analytically constructed concept of a “regulatory space,” an arena where different regulatory actors variously compete and cooperate to engender particular outcomes and behaviours.<sup>29</sup> Since it is an analytically constructed concept, the regulatory space theory does not refer to a

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<sup>27</sup> Leigh Hancher & Michael Moran, *Organizing Regulatory Space, in A READER ON REGULATION* 148–172 (1998).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 166-67.

place but, rather, an arena in which regulatory activities occur and are conducted by regulatory actors. Different fields of activities have different regulatory spaces, and no actor is presupposed any privilege over others, giving room for analyses of competitive struggles, resources, and capabilities embodied by any actor entering the regulatory space. This means that formal rules, norms, and practices set by authorities do not directly and entirely control the regulatory space but instead coordinate and interact with other regulatory actors, resulting in various outcomes and behaviours. Thus, the theory invites considerations of who gains entry into the regulatory space and on what terms, and it enables investigations of the co-regulation between different actors.

Hancher and Moran further offered a subset of analytical concepts to analyse the ‘institutional dynamics’ of a regulatory space. Since the regulatory space theory cannot assume authorities as sources of regulation, it anchors institutional dynamics as the sources of regulation. Institutional dynamics refer to organised forces that structure interactions and coordination between regulatory actors, moulding the preferences and interests of regulatory actors into regulatory outcomes.<sup>30</sup> The institutional dynamics of any regulatory space is often shaped by and manifested in three aspects, namely: national peculiarities, historical timing, and organizational structure.<sup>31</sup> National peculiarities refer to the “values and attitudes which bind the system together and determine the place of the legal system in the culture of society as a whole.”<sup>32</sup> It emphasises the legal culture and political climate in which the regulatory space exists, which later predisposes assumptions of the role of laws and regulations, defining fundamental parameters of the regulatory space. Historical timing emphasises the nature of regulation as an activity whereby routine procedures crucially determined regulatory outcomes but shifted radically over time. It directs analyses to historical context to track the origins of regulations, as “understanding regulatory arrangements in the present depends on understanding the historical configuration out of which they developed.”<sup>33</sup> Historical timing also highlights the tendency of regulation arising from economic or political crises when a change was demanded and directs analyses to the periods between crises when dominant actors either consolidate or overtake to identify the historical origin of regulation.<sup>34</sup>

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<sup>30</sup> M. Dunford, *Theories of regulation*, in AN INTRODUCTION TO LAW AND REGULATION 16–78 (2007).

<sup>31</sup> Hancher and Moran, *supra* note 27, at 155-166.

<sup>32</sup> *Id.* at 156.

<sup>33</sup> Dunford, *supra* note 30, at 67.

<sup>34</sup> Hancher and Moran, *supra* note 27, at 160.

Finally, organizational structure concerns the roles of regulatory actors in the regulatory space, which is predetermined by their roles or status in their organisations. For example, government authorities or businesses often clearly define the roles and statuses of each regulatory actor belonging to their organisations. Key features of organisations, such as “extended hierarchies, a refined division of administrative labour; enforced cooperation in the implementation of regulation; the relentless pursuit of institutional advantage,” often have crucial consequences for regulatory outcomes.<sup>35</sup> Regulatory actors backed by large organisations typically dominate the regulatory space, as they can use the organisations’ scales, resources, and complex hierarchies to enforce or prevent cooperation and influence decision-making and regulatory standards. Organisations can also guard the condition of access to a regulatory space for those outside the organisation. The common reality is that private individuals often enjoy limited access or are denied access to a regulatory space when refused regulatory status by legitimate regulatory organisations.<sup>36</sup> Yet, private individuals can be recognized as legitimate regulatory actors when existing actors already in the regulatory space respond to or yield to the demands of private individuals, though sustained or permanent participation is often precluded.<sup>37</sup> Investigations of organizational structure may explain why different actors are granted particular regulatory authority and responsibilities and predict changes in regulatory spaces when the capacities of regulatory actors are enhanced or reduced.

Since Hancher and Moran introduced regulatory space theory, other regulation scholars have widely adopted and further innovated upon the theory.<sup>38</sup> These studies placed greater emphasis on the concept implied in Hancher and Moran’s introduction, which is power relations. Hancher and Moran emphasized the equal possibilities of any actor occupying the regulatory space, which also means that some actors can achieve greater occupation than others by mobilising resources through existing power relations.<sup>39</sup> The power relations between these actors play a key role in shaping the outcomes of regulation. For instance, a multi-level analyses of employment regulation found that power relations play a crucial role in shaping the

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<sup>35</sup> *Id.* at 162–163.

<sup>36</sup> Dunford, *supra* note 30, at 67.

<sup>37</sup> *Id.*

<sup>38</sup> Cristina Inversi, Lucy Ann Buckley & Tony Dundon, *An analytical framework for employment regulation: investigating the regulatory space*, 39 *EMPL. RELATIONS*. 291, 291–307 (2017); Tony Dundon et al., *Employer occupation of regulatory space of the Employee Information and Consultation (I&C) Directive in liberal market economies*, 28 *WORK. EMPLOY. SOC.* 21, 21–39 (2014).

<sup>39</sup> Hancher and Moran, *supra* note 27 at 154.

capability of actors in mobilising resources to shape regulatory standards and capabilities for enforcement, crucially influencing the outcomes of regulation.<sup>40</sup> Indeed, the concept of power relations may explain how certain interests of one actor are advanced or sabotaged over others. Additionally, coupled with historical timing, organizational structure, and national peculiarities, power relations can explain how and why one advanced set of interests are codified into formal laws and regulations, while others are discarded. As such, national peculiarities, historical timing, organizational structure, and power relations are useful concepts to analyse the Vietnamese cyber regulatory regime and is applied in this study. The application of these concepts will unveil the ways in which cyberspace has facilitated socio-legal conditions to enable different domestic actors in Vietnam to shape the cyber regulatory regime.

### B. *Definitions, Data, Method*

Before discussing the Vietnamese cyber regulatory regime, several definitions must be established. First, the term ‘cyberspace’ has not been clearly defined by Vietnamese legislation or policymakers. Indeed, there is no consensus in the academic literature on the definition of cyberspace, as parameters of cyberspace territory are ‘permeable and protean,’ varying across zones of commerce, academic institutions, and governance.<sup>41</sup> Conventional definitions often view cyberspace as an interconnected network of computers and information.<sup>42</sup> Many official documents have employed this definition, such as the U.S. Department of Defense and the European Commission.<sup>43</sup> Both definitions characterise cyberspace as the interconnection of information, computers, and networks. Yet, these conventional definitions narrowly neglect the human aspects of cyberspace. A more comprehensive definition would describe cyberspace as “a time-dependent set of interconnected information systems and the human users that interact with these systems.”<sup>44</sup> Using this working definition, cyber legislation in Vietnam regulates

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<sup>40</sup> Inversi, Buckley, and Dundon, *supra* note 38 at 298.

<sup>41</sup> Lance Strate, *The varieties of cyberspace: Problems in definition and delimitation*, 63 WEST. J. COMMUN. 382, 382–383 (1999).

<sup>42</sup> RAIN OTTIS & PEETER LORENTS, *Cyberspace: Definition and implications*, INTERNATIONAL CONFERENCE ON INFORMATION WARFARE AND SECURITY, 267, 267 (2010).

<sup>43</sup> WILLIAM E. GORTNEY, *Department of Defense Dictionary of Military and Associated Terms*, 25 U.S. DEPARTMENT OF DEFENSE. 55 (2021), <https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/dictionary.pdf>; EUROPEAN UNION MILITARY COMMITTEE, *EUMC Glossary of Acronyms and Definitions*, 6763 COUNCIL OF THE EUROPEAN UNION. 68 (2019), <https://data.consilium.europa.eu/doc/document/ST-6763-2019-INIT/en/pdf>.

<sup>44</sup> OTTIS AND LORENTS, *supra* note 42, at 268.

technologies and technical systems of cyberspace, human users, and their interactions with these technologies. This definition informs the collection of legislation, regulations, and discourses related to cyberspace in Vietnam.

Domestic discourse on cyber laws and regulations refers to government announcements and cultural and media materials discussing cyber laws and regulations in Vietnam. I gathered these materials from seven online editions of the People's Newspaper, Information and Communications Newspaper, Vietnamnet, Border Guard Newspaper, Law Newspaper of Ho Chi Minh city, Labour Newspaper, and Vietnam Financial Times. They offered relevant articles with large, diverse readership, and an engine for keyword searches. Legislation in this study refers to all normative documents issued by the Vietnamese executive branch. Regulations refer to the directives, mechanisms, actions, and processes that Vietnamese authority implemented to achieve regulatory purposes. To gather data, I searched through official websites of the Vietnamese government to collect relevant legislation. The legislation collected was from six websites of the Ministry of Justice, the Ministry of Science and Technology, the National Assembly of Vietnam, the Authority of Information Security, the Ministry of Planning and Investment, and the Central Internal Affairs Committee.

Analysis of the data obtained above employed discourse analysis. The aims were to identify interactions between state and non-state actors, as well as the effects of those interactions on cyber laws, regulations, and approaches. Discourses directly “produce shared meanings [of] regulatory norms and social practices which then form the basis for [regulatory] action.”<sup>45</sup> Discourse analysis enables the examination of words, expressions, and metaphors to identify explicit language and implicit meanings. The use of discourse analysis to analyse Vietnamese legislation, discourses, regulations, and documents related to cyber regulation identified regulatory objectives in the interests of each regulatory actor, socio-legal conditions that regulatory actors identified and responded to, interactions between regulatory actors, struggles for the meaning of regulatory issues, solutions, and effects. The findings include (1) socio-legal conditions facilitated by cyberspace evolving in Vietnamese society over three time periods; (2) interests, objectives, and preferences of individual actors regarding the regulation of cyberspace in Vietnam, and; (3) interactions and the effects of interactions between regulatory actors on laws, regulatory measures, and approaches to cyber regulation in Vietnam. These findings are discussed in the following three sections.

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<sup>45</sup> Julia Black, *Regulatory conversations*, 29 J. LAW SOC. 163–196, 165 (2002).

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### III. THE FIRST PERIOD OF THE VIETNAMESE CYBER REGULATORY REGIME

On November 19, 1991, Professor Rob Hurlé of the Australian National University brought an internet modem to Vietnam and introduced his idea of connecting Vietnam to the internet.<sup>48</sup> Professor Hurlé then experimented with connecting computers in Vietnam to Australian computers and succeeded in setting up emails with the Vietnam Institution of Information Technology in 1992.<sup>49</sup> From 1992 to 1996, the Vietnam Institution of Information Technology and the Vietnam Posts and Telecommunications Group cooperated with Professor Hurlé to experiment with other methods of internet connection in Vietnam and successfully connected Vietnam to the global internet in January 1997. In April 1997, the Vietnamese government passed Decree No. 21-CP, issuing temporary regulations on the management, establishment, and uses of internet networks, marking the beginning of cyber regulation in Vietnam.<sup>50</sup> The political climate and legal culture of Vietnam (national peculiarities) during this

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<sup>46</sup> VAN DIJK & A TEUN, *DISCOURSE AND KNOWLEDGE: A SOCIOCOGNITIVE APPROACH* (2014).

<sup>47</sup> Black, *supra* note 45 at 165.

<sup>48</sup> CENTER, *supra* note 11 at 56.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

period predisposed a receptive attitude towards new information technologies, which facilitated fruitful cooperation with Professor Hurlle.

### C. National Peculiarities of Vietnam When the Internet Arrived

When professor Hurlle attempted to connect Vietnam to the internet in 1991, the country was going through a period of radical renovations generated by the *Doi Moi* (renovation) policy. During the previous decade of the 1980s, Vietnam was facing rampant inflation, falling production, and a vibrant informal economy that was largely unregulated.<sup>51</sup> Vietnamese Party leaders at the time could no longer ignore the successes of neighbouring capitalist economies, fearing that increasing awareness of disparities between Vietnam and its neighbours would undermine the country's legitimacy and sovereignty.<sup>52</sup> In the Sixth National Congress of the Communist Part of Vietnam (CPV) in 1986, Party leaders introduced the *Doi Moi* (renovation) policy.<sup>53</sup> The policy proposed a comprehensive renovation of the entire country to meet three key objectives: (1) transforming a highly centralized economy to a state-managed, socialist, multi-sectoral economy; (2) democratizing social life by developing the rule of law to create a state of the people, by the people, and for the people; and (3) implementing an open-door policy and promoting relations with other countries.<sup>54</sup> The *Doi Moi* policy portrayed a renovated set of attitudes and values embodied by the CPV, emphasising economic development, the rule of law, modernization of the country, and relations with the international world.

The *Doi Moi* policy enabled the burgeoning of cyberspace in Vietnam by engendering a receptive attitude towards new technology. By 1995, the country had overcome its economic crisis by successfully increasing its GDP, controlling inflation, and expanding its financial markets.<sup>55</sup> The economic achievements created preconditions for the additional goals of development, industrialisation, and modernization. The CPV recognized that knowledge and technologies were the productive forces crucial to expedite these three objectives.<sup>56</sup> Their

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<sup>51</sup> JOHN GILLESPIE, *TRANSPLANTING COMMERCIAL LAW REFORM: DEVELOPING A 'RULE OF LAW' IN VIETNAM* (John Gillespie ed., 2006).

<sup>52</sup> DO MUOI, *Political Report to the Mid Term National Party Conference* (1994).

<sup>53</sup> *Id.*

<sup>54</sup> Ngo Quang Xuan, *Vietnam: Potential Market and New Opportunities*, 19 *FORDHAM INT. LAW J.* (1995), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1449&context=ilj>.

<sup>55</sup> *Id.*

<sup>56</sup> Vladimir Mazyrin, *Economic modernization in Vietnam from industrialization to innovation stage*, 29 *VNU J. SCI. ECON. BUS.* 87–106 (2013).

attitude towards technology was clear, as they explained that Vietnam could meet the three objectives of Doi Moi because “Vietnam is a late-comer that can learn from the other newly industrialized countries’ experiences, make the most of scientific-technological advancement, and benefit from the achievements and current trend towards regionalization and internationalization for the sake of development.”<sup>57</sup> The attitude carried through to the early 2000s, as Directive No.58-CT/TW was passed by the Central Executive Committee to accelerate the use and development of information technology. It explained the CPV’s recognition, stating “Information technology (IT) is one of the most important enabling forces for development . . . It promotes the reform process, speeds up the development and modernisation of economic sectors, and empowers the competitive capacity of businesses . . . It creates possibilities to leapfrog in successfully realizing the cause of industrialisation, modernisation.”<sup>58</sup> This receptive attitude towards technology enabled cooperation with Professor Hurlle and the successful connection of Vietnam to the global internet.

Second, the Doi Moi policy engendered an aspiration to achieve the rule of law, which shaped an emphasis on laws and regulations in the management of cyberspace. The aspiration for the rule of law was exhibited in the second objective of the Doi Moi policy as follows: “[d]emocratizing social life [by] developing the rule of law [for] a state of the people, by the people and for the people.”<sup>59</sup> Coupled with this aspiration was a socialist-influenced understanding of development, namely, state economic management (quản lý kinh tế nhà nước). Since the Fourth Vietnam Workers Party Congress in 1976, Vietnam had adopted Soviet state economic planning as the primary regulatory instrument.<sup>60</sup> This notion posited that state regulation, where state authorities had broad ‘prerogative’ powers to fine-tune economic production, would enable economic development in Vietnam, contrasting with the U.S. notion that state regulation would hinder rather than assist economic development.<sup>61</sup> This understanding weaved economic development with state cyberspace regulations, and the consequences prompted the immediate establishment of cyber laws and regulations following the arrival of the internet in Vietnam.

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<sup>57</sup> Xuan, *supra* note 54.

<sup>58</sup> COMMUNIST PARTY OF VIETNAM, *Chỉ thị số. 58-ct / tw của Đảng Cộng Sản Việt Nam về việc sử dụng và phát triển của công nghệ thông tin vì sự nghiệp công nghiệp hóa, hiện đại hóa [Directive No.58-ct/tw of the Communist party of Vietnam on accelerating the use and development of informat.*

<sup>59</sup> Xuan, *supra* note 54.

<sup>60</sup> John Gillespie, *Changing concepts of socialist law in Vietnam*, in *ASIAN SOCIALISM AND LEGAL CHANGE: THE DYNAMICS OF VIETNAMESE AND CHINESE REFORM* (2005).

<sup>61</sup> *Id.*

*D. Organizational Structures of Regulatory Actors from 1997 to 2007*

During the initial period of the cyber regulatory regime, Vietnamese state actors embodied a substantial organizational structure, formulating the first approach to cyber regulation in Vietnam. Vietnamese state actors in this period were comprised of key government bodies involved in regulating cyberspace, including the National Assembly, the Communist Party of Vietnam (CPV) or, more specifically, its Political Bureau and Central Committee.<sup>62</sup> According to the constitution, the Vietnamese government also included a bifurcated Executive branch (consisting of the premier and the president), the People's Courts, and the People's Procuracy.<sup>63</sup> Yet, data collected for this research did not find these bodies involved in the regulation of cyberspace in Vietnam. Rather, it found that the Vietnamese government deputized the Ministry of Culture and Information as a regulator of cyberspace, as stated by Decree number 55/2001/ND-CP on the management, provision, and use of internet services.<sup>64</sup> Thus, Vietnamese state actors in the initial period were comprised of the National Assembly, the CPV, and the Ministry of Culture and Information, and embodying a substantial organizational structure due to the scale, hierarchies, resources, and political powers of those involved. Their organizational structure enabled the state actors to implement the first approach to regulate cyberspace in Vietnam, namely, the *development-as-regulation* approach.

Against the *Doi Moi* backdrop, Vietnamese state actors approached cyberspace as a technological apparatus with vast potential to leapfrog the country's economic development.<sup>65</sup> They identified underdevelopment as an issue to be addressed, passed cyber legislation to enhance economic development, and identified economic development as the objective and strategy to regulate cyberspace. These objectives, strategies, and responses aimed at wielding cyber regulation as an apparatus for economic development, and in turn, formulated an approach which is referred to in this research as the *development-as-regulation* approach to Vietnamese cyber regulation. The development-as-regulation approach refers to the formulation of economic development as the method to regulate cyberspace by

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<sup>62</sup> Thi Huong Nguyen, *Pursuing Constitutional Dialogue within Socialist Vietnam: The 2010 Debate* Nguyen Thi Huong, 13 AUST. J. ASIAN LAW 69–86, 70 (2012).

<sup>63</sup> *Id.* at 70.

<sup>64</sup> NGHỊ ĐỊNH 55/2001/NĐ-CP CỦA CHÍNH PHỦ SỐ 55/2001/NĐ-CP NGÀY 23 THÁNG 8 NĂM 2001 VỀ QUẢN LÝ, CUNG CẤP VÀ SỬ DỤNG DỊCH VỤ INTERNET [DECREE ON THE MANAGEMENT, PROVISION AND USE OF INTERNET SERVICES] ON THE MANAGEMENT, PROVISION AND USE OF INTERNET SERVICES, (2001).

<sup>65</sup> COMMUNIST PARTY OF VIETNAM, *supra* note 58.

identifying: (1) underdevelopment as the regulatory issue to be addressed; (2) choices of development as regulatory instruments; and (3) economic development as the regulatory objective.

First, the development-as-regulation approach was manifested in the formulation of underdevelopment as the issue to be addressed by cyber regulation. This formulation was exhibited in announcements from state actors, such as an announcement in the XII National Assembly in 2009, where the Vietnamese government stated that “the scale and sustainable development [of cyberspace] in comparison with other countries in the region as well as in the world still had many limitations, people in remote and isolated areas have not yet had adequate access to advanced telecommunication services.”<sup>66</sup> An announcement by the National Assembly Delegate Ngo Duc Manh further exhibited the weaving of economic development and cyber regulation as follows: “draft bills need regulations to ensure management and create a healthy competitive environment among telecommunications service providers, especially in terms of infrastructure.”<sup>67</sup> As such, the regulation of cyberspace was embodied in the “promotions of electronic transactions, contributions to improving the efficiency of socio-economic development, and incorporations of science and technology into administrative reform.”<sup>68</sup> In conjunction with the formulation of underdevelopment issues, state actors also passed legislation identifying development as the strategy of cyber regulation.

Second, cyber legislation in the first period stated that the developing technologies and economic resources were the strategies to regulate cyberspace. The Ministry of Information and Communications stated: “Law on Electronic Transactions ... plays an important role in creating a legal basis for promoting the application of information technology, promoting electronic transactions, contributing to improve socio-economic development and efficiency, and introducing the application of science and technology to the

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<sup>66</sup> Le Minh Truong, *Giới thiệu luật viễn thông [Introduction to Telecommunication Law]*, MINH KHUE LAW (2017), <https://luatminhkhue.vn/gioi-thieu-luat-vien-thong.aspx>.

<sup>67</sup> Le Kien, *Quốc hội thảo luận dự án Luật Viễn thông: Triệt “mạng nhện,” “rễ cây” đô thị*, HO CHI MINH CITY LAWS ONLINE NEWSPAPER (2009), <https://plo.vn/thoi-su/chinh-tri/quoc-hoi-thao-luan-du-an-luat-vien-thong-triet-mang-nhen-re-cay-do-thi-238641.html>.

<sup>68</sup> Hội thảo Tổng kết Luật Giao dịch điện tử [Conference summarising Electronic Commerce law], , AUTHORITY OF INFORMATION SECURITY (2020), <https://ais.gov.vn/hoat-dong-su-kien/hoi-thao-tong-ket-luat-giao-dich-dien-tu.htm>.

administrative legal reform.”<sup>69</sup> Article 7 of Decree number 55/2001/ND-CP on the management, provision and use of internet in 2001 similarly conveyed the regulatory strategy of “strengthening the work of dissemination, education and guidance of users using internet services aimed at exploiting and using information on the internet in accordance with law.”<sup>70</sup> Article 7 of the 2005 Law on Electronic Transactions, Decree number 51/2005/QH11, detailed the strategy to regulate electronic transactions by promulgating the technologies, developing resources to supervise and handle violations, and cooperating internationally.<sup>71</sup> Similarly, Article 6 of the 2006 Law on Information Technology<sup>72</sup> presented three strategies, including promulgating the technologies, developing human and technological resources, and managing information technologies. Associated Decree numbers 55/2001/NĐ-CP, 27/2007/NĐ-CP and 97/2008/NĐ-CP also presented regulatory strategies for developing technologies and resources. A Decree on the implementation of electronic transactions law in 2007 and a Decree updating the management, provision, and use of internet services in 2008 reiterated the development-as-regulation strategy.<sup>73</sup>

Third, development was emphasized as the objective of cyber regulation in the first period. During this period, the Vietnamese government consistently announced cyber legislation to serve three development objectives, namely: economic, legal, and technological development. For example, the Ministry of Information and Communications stated that “Law on Electronic Transactions... plays an important role in creating a legal basis for promoting the application of information technology, promoting electronic transactions, contributing to improve the socio-economic development and efficiency, and introduce the application of science and technology to

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<sup>69</sup> Thanh Phuc Nguyen, *Hội thảo Tổng kết Luật Giao dịch điện tử [Conference summarising Electronic transaction Law]* (25AD), <https://ais.gov.vn/hoat-dong-su-kien/hoi-thao-tong-ket-luat-giao-dich-dien-tu.htm>.

<sup>70</sup> NGHỊ ĐỊNH CỦA CHÍNH PHỦ SỐ 55/2001/NĐ-CP NGÀY 23 THÁNG 8 NĂM 2001 VỀ QUẢN LÝ, CUNG CẤP VÀ SỬ DỤNG DỊCH VỤ INTERNET [DECREE NUMBER 55/2001/ND-CP ON THE MANAGEMENT, PROVISION AND USE OF INTERNET], (2001).

<sup>71</sup> Nguyen, *supra* note 69.

<sup>72</sup> LUẬT CÔNG NGHỆ THÔNG TIN SỐ 67/2006/QH11 [LAW ON INFORMATION TECHNOLOGY NUMBER 67/2006/QH11], (2006).

<sup>73</sup> NGHỊ ĐỊNH SỐ 26/2007/ND-CP VỀ HƯỚNG DẪN LUẬT GIAO DỊCH ĐIỆN TỬ VỀ CHỮ KÝ SỐ VÀ DỊCH VỤ CHỨNG THỰC CHỮ KÝ SỐ [DECREE NO. 26/2007/ND-CP DETAILING THE IMPLEMENTATION OF THE LAW ON E-TRANSACTION], (2007); NGHỊ ĐỊNH SỐ 97/2008/NĐ-CP VỀ QUẢN LÝ, CUNG CẤP, SỬ DỤNG DỊCH VỤ INTERNET VÀ THÔNG TIN ĐIỆN TỬ TRÊN INTERNET [DECREE NO. 97/2008/ND-CP ON THE PROVISION OF INFORMATION ON THE PERSONAL ELECTRONIC INFORMATION PAGE], (2008).

the administrative legal reform”.<sup>74</sup> The objectives of economic, legal, and technological development were reiterated in every subsequent cyber law. However, distinctive to the first period, the 2005 Law on Electronic Transactions, the 2006 Law on Information Technology, and associated Decrees heavily emphasized development as the primary objective. These three aspects of regulatory issues, regulatory strategies, and regulatory objectives formulated the development-as-regulation approach.

The shared interest in economic development among state-owned and private businesses approved and solidified the development-as-regulation approach to cyber regulation during the first period. All three actors of the Vietnamese state, state-owned businesses, and private businesses operating in Vietnam shared an interest in economic development. For example, the Vietnamese Chamber of Commerce and Industry suggested reforms of article 11b.2.c in Decree number 25/2011/NĐ-CP to allow more enterprises to receive a ‘license to use commercially available radio frequency bands beyond the distribution capacity’ and expand their commercial capacity.<sup>75</sup> Their suggestions demonstrate an interest in economic development among private businesses. The Ministry of Information and Communications stated that economic development was the key objective of the 2005 Law on Electronic Transactions and the 2006 Law on Information Technology.<sup>76</sup> State-owned businesses such as Viettel provided suggestions for the state to execute the commercialisation of new information technologies, demonstrating a strong interest in economic development.<sup>77</sup> All three actors, including the state, state-owned businesses and private businesses operating in Vietnam, shared an interest in economic development during the first period. This shared interest supported and maintained the development-as-regulation approach to cyber regulation in the first period.

The solidified development-as-regulation approach further facilitated great technological advancements for Vietnam. After

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<sup>74</sup> Nguyen, *supra* note 69.

<sup>75</sup> VCCI, *VCCI Góp ý Dự thảo Nghị định sửa đổi, bổ sung một số điều của Nghị định số 25/2011/NĐ-CP quy định chi tiết và hướng dẫn thi hành một số điều của Luật Viễn Thông [VCCI comments on the Draft Decree number 25/2011/ND-CP on the Telecommunications Law]*, VIETNAM CHAMBER OF COMMERCE AND INDUSTRY (2019), [http://vibonline.com.vn/bao\\_cao/vcci\\_gop-y-du-thao-nghi-dinh-sua-doi-bo-sung-mot-dieu-cua-nghi-dinh-252011nd-cp-quy-dinh-chi-tiet-va-huong-dan-thi-hanh-mot-dieu-cua-luat-vien-thong](http://vibonline.com.vn/bao_cao/vcci_gop-y-du-thao-nghi-dinh-sua-doi-bo-sung-mot-dieu-cua-nghi-dinh-252011nd-cp-quy-dinh-chi-tiet-va-huong-dan-thi-hanh-mot-dieu-cua-luat-vien-thong).

<sup>76</sup> Hội thảo Tổng kết Luật Giao dịch điện tử [Conference summarising Electronic Commerce law], AUTHORITY OF INFORMATION SECURITY (2020), <https://ais.gov.vn/hoat-dong-su-kien/hoi-thao-tong-ket-luat-giao-dich-dien-tu.htm>.

<sup>77</sup> See VIETNAM INTERNET NETWORK INFORMATION CENTER, *supra* note 11.

Vietnam successfully connected to the global internet in January 1997, internet services were provided to public users by December 1997. In 2003, broadband internet access service MegaVNN was introduced to allow internet access at higher speeds based on the Asymmetric Digital Subscriber Line (ADSL).<sup>78</sup> In 2003, the internet and mobile fees rapidly decreased by 10 to 40 percent.<sup>79</sup> From 2001 to 2007, fees for telecommunications and internet service further decreased to attract more users; internet users were said to increase rapidly.<sup>80</sup> The technological advancements of the internet during the first period succeeded in disseminating the internet to broader society and attracting people to sign up. The expansion of internet access to the wider population owed its success to state-owned businesses executing the economic strategies put forth by state actors. State-owned enterprises as hybrid actors were deputised by state actors to regulate cyberspace and advance economic development when consulted in the drafting of cyber legislation. This privilege was selective, as state actors excluded private enterprises from official consultative forums and facilitated a power struggle between state-owned and private enterprise actors.

*E. Power Relations between State, State-Owned, and Private Businesses*

The Vietnamese state excluded private businesses from the cyber regulatory space and facilitated a power struggle between state-owned and private enterprises. The state selectively granted access to the cyber regulatory space to state-owned enterprises while they consistently excluded private enterprises from consultative seminars and conferences on the regulation of cyberspace. For example, in Hanoi on 12 November 2008, the Ministry of Information and Communications organised a seminar titled “Drafting the Law on Telecommunications” in the Northern provinces.<sup>81</sup> Attending the Conference were the Standing Deputy Minister of Information and Communication, representatives from the Ministry of Industry and Trade, the Ministry of Construction, the Ministry of Planning and Investment, the Ministry of Justice, the Government Office, and 13 representatives from the Department of Information and Communications in the North.<sup>82</sup> The seminar also invited business

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<sup>78</sup> *Id.* at 57.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Huong Giang, *Hội thảo lấy ý kiến góp ý “Dự thảo Luật Viễn thông” [Consultative workshop on “Drafting Telecommunication Law]*, MINISTRY OF INFORMATION AND COMMUNICATIONS (2008), <https://fvt.mic.gov.vn/Pages/TinTuc/106372/Hoi-thao-lay-y-kien-gop-y--Du-thao-Luat-Vien-thong-.html>.

<sup>82</sup> *Id.*

representatives from the Vietnam Posts and Telecommunications Group (VNPT), the Military Telecom Corporation (Viettel), and the Electricity Telecommunication Company Vietnam (EVN Telecom). All of these enterprises were state-owned enterprises. These official forums that consulted businesses on laws and regulations surrounding the Vietnamese cyberspace during the first period repeatedly excluded private enterprises.

This selective inclusion created a power struggle between state-owned and private enterprises. Private businesses struggled for access to the regulatory space by expressing their opinions on cyber regulation and criticisms about their exclusion. For example, the Vietnamese Chamber of Commerce and Industry sent a letter to the Ministry of Information and Communications suggesting reforms to five clauses in Decree number 25/2011/ND-CP.<sup>83</sup> The letter detailed issues with unreasonable requirements for telecommunication licenses, unfair competition, vague and excessive regulatory powers, unrealistic legal liabilities over identities of users, and so on. For instance, the letter expressed criticisms of article 11b.2.c of Decree number 25/2011/ND-CP for lacking transparent criteria when requiring enterprises to have ‘considerable market power’ to receive ‘license to use commercially available radio frequency bands beyond the distribution capacity.’<sup>84</sup> The vague and intrusive requirements were criticised for creating unfair competition in the sector and granting excessive powers to regulators to make arbitrary decisions. The selective inclusion of state-owned businesses engendered a power struggle between private business actors versus state and hybrid actors.

The asymmetrical power dynamic between state and hybrid actors versus private businesses shaped the proliferation of cyber laws and regulations in state-controlled sectors such as telecommunications. As previously discussed, private businesses had considerably less power than state-owned businesses in the cyber regulatory space to influence cyber regulation. With more power granted by the state, state-owned businesses influenced the proliferation of economic development in state-monopolised sectors such as telecommunications. For example, state-owned businesses, including the Vietnam Posts and Telecommunications Group (VNPT), the Military Telecom Corporation (Viettel), and the Electricity Telecommunication Company Vietnam (EVN Telecom), were closely involved in drafting the Law on Telecommunications in November 2008 to aid in the development of the telecommunications sector.<sup>85</sup> As

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<sup>83</sup> VCCI, *supra* note 76.

<sup>84</sup> *Id.*

<sup>85</sup> Giang, *supra* note 81.

a result, the telecommunications sector benefited from significant laws and regulations to enable economic development. Economic benefits to private businesses were evident as internet and mobile fees in Vietnam rapidly decreased between 10 to 40 percent from 2001 to 2007.<sup>86</sup> Legislation such as the 2005 Law on Telecommunications and associated Decrees further protected the monopoly of the state and state-owned businesses in the sector. One example is the 2009 Law on Telecommunications, which stated the following:

[T]he Ministry of Information and Communications shall promulgate a list of telecommunications businesses and groups of telecommunications businesses that dominate the market in important telecommunications services subject to competition management by the State, and a list of telecommunications businesses that possess essential devices; and devise and apply management measures to promote competition and assure fair competition in the provision of telecommunications services.<sup>87</sup>

The asymmetrical power imbalance between the state, state-owned businesses, and private businesses from 1997 to 2007 not only shaped cyber legislation and regulations, but also technological advancement for Vietnam during the first period. This technological advancement crucially shaped the socio-political conditions of the second period.

#### IV. THE SECOND PERIOD OF THE VIETNAMESE CYBER REGULATORY REGIME

##### A. *Historical Timing of a Globalised Vietnam*

In January 2007, Vietnam advanced the Doi Moi policy by joining the World Trade Organization (WTO). Vietnam's membership in the WTO yielded profound boosts in economic performance, such as increased GDP and FDI inflows, an improved investment climate, strengthened competition, and so on.<sup>88</sup> These achievements were owed in large part to Vietnam's commitment to the WTO. Specifically, Vietnam was committed to offering all WTO members more

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<sup>86</sup> VIETNAM INTERNET NETWORK INFORMATION CENTER, *supra* note 11 at 57.

<sup>87</sup> LUẬT VIÊN THÔNG SỐ 41/2009/QH12 [LAW ON TELECOMMUNICATIONS NUMBER 41/2009/QH12], (2005).

<sup>88</sup> Vo Tri Thanh & Nguyen Anh Duong, *Vietnam after Two Years of WTO Accession: What Lessons Can Be Learnt?*, 26 ASEAN ECON. BULL. 115, 115–35 (2009).

favourable market access conditions.<sup>89</sup> These commitments opened the telecommunications sector to private enterprises and enabled private telecommunications providers in Vietnam to enter into ventures with foreign partners to provide telecommunications services.<sup>90</sup>

The economic boom and joint ventures brought about rapid technological advancements. Vietnam's internet connection speed, which averaged 1Gbps in 2004, was rapidly upgraded to 10Gbps in 2008, and 3G internet technology was introduced in 2009.<sup>91</sup> The Vietnam National Internet eXchange (VNIX) system of switching points, acclaimed as one of the most efficient national internet exchange systems in the region, was launched to connect the transshipment of internet traffic between internet service providers. The VNIX and other technological advancements facilitated the rapid expansion of the Vietnamese internet, further reductions in cost, and an exponential increase in internet users.<sup>92</sup> Figure 1 presents the exponential increases in internet users in Vietnam since 2008.

**Figure 1. Internet subscribers by category**

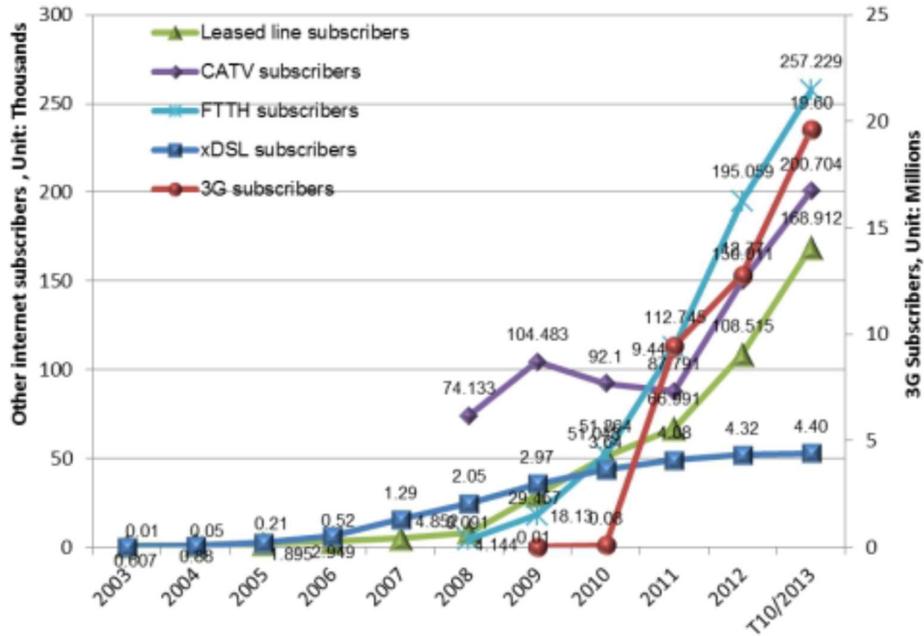
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<sup>89</sup> Roy Chun Lee, *Telecommunications in Vietnam*, in THE IMPACTS AND BENEFITS OF STRUCTURAL REFORMS IN TRANSPORT, ENERGY AND TELECOMMUNICATIONS SECTORS, 417, 417–432 (2011).

<sup>90</sup> *Id.* at 417.

<sup>91</sup> VIETNAM INTERNET NETWORK INFORMATION CENTER, *supra* note 11 at 57.

<sup>92</sup> See Vietnam Internet Network Information Center, *Report on Vietnam Internet Resources 2012* 1–35 (2012), papers3://publication/uuid/791357AD-4138-4DBB-8CA6-5C07B58FF4A3.

Vietnam internet resource 2013<sup>93</sup>

As Figure 1 demonstrates, rapid technological advancements in Vietnam facilitated an exponential increase in internet users. From 180,000 users in 2001, Vietnamese internet users reached 5.6 million by 2008 and 40 million by 2015, representing 43 percent of the population at the time.<sup>94</sup> User increases were also facilitated by online communications tools being introduced in Vietnam, such as Yahoo Mail, Yahoo Messenger, and the Yahoo 360 blog. They attracted millions of Vietnamese to the internet to socialise with one another.<sup>95</sup> According to a Group M report, social networking and online chatting are the most common uses of the internet among Vietnamese youth and the second-most popular for Vietnamese above 45 years of age.<sup>96</sup> The number of users was so significant that Yahoo offered a '360 Plus Vietnam' service to retain the Vietnamese user base after the Yahoo 360 blog closed down in 2008. The void created by the Yahoo 360 blog closing facilitated large flows of Vietnamese users to other social networking sites. By 2014, Facebook had over 20 million accounts, representing 22 percent of the population, while Zing had 9 million users.<sup>97</sup>

<sup>93</sup> VIETNAM INTERNET NETWORK INFORMATION CENTER, *supra* note 11 at 58 fig.52.

<sup>94</sup> Morris-jung, *supra* note 24 at 403.

<sup>95</sup> STEPHEN QUINN & KIM KIERANS, ASIA'S MEDIA INNOVATORS VOL. 2 50 (2010).

<sup>96</sup> GRAY, *supra* note 24 at 4.

<sup>97</sup> *Id.*

During the period spanning 2008 to 2017, the exponential growth of social network users in Vietnam facilitated a rise in public opposition to state policies. Blogging became the platform for Vietnamese users to express their opinions, including discussions on state policies and regulations. The NetCitizen Report in March 2010 found that young people are most likely to post to online forums and write blogs due to their need to express personal opinions and a desire to speak out about perceived corruption at various levels of government.<sup>98</sup> Vietnamese users also employ cyberspace to disseminate petitions and organise campaigns. Social media have narrowed the gap between the general population of everyday people and their viewpoints with the more political and critical agendas of intellectual dissidents.<sup>99</sup> This phenomenon facilitated a series of petitions sparked in the late 2000s, such as land disputes over public parks in 2007 opposition to blogging restrictions in 2008, and bauxite mining in 2009, and so on.<sup>100</sup> Since 2009, high-profile and highly controversial online petitions have emerged every year with increasing popularity and frequency.<sup>101</sup> Together with petitioning, online users also organised public protests of land regulations, land evictions, felling of street trees, and many other issues.<sup>102</sup> This historical timing facilitated a period of deepened struggles between state and non-state actors in Vietnam.

### *B. Power Struggles between State and Non-State Actors*

Vietnam's membership in the WTO facilitated the rapid technological advancement of Vietnam's cyberspace and in turn facilitated a period of power struggles between state and non-state actors. The technological advancement enabled activist actors to challenge cyber laws and regulatory measures, arguing that some cyber laws and regulatory measures sought to restrict civil liberty rights, such as the rights to freedom of speech, privacy rights, and international human rights.<sup>103</sup> For example, in the bauxite mining protest, activists criticised the Vietnamese government's measure of attacking the bauxite mine website in 2009 as violations of rights to freedom of

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<sup>98</sup> QUINN & KIERANS, *supra* note 96.

<sup>99</sup> GRAY, *supra* note 24 at 3.

<sup>100</sup> Hunter Marson, *Bauxite mining in Vietnam's Central Highland: An Arena for Expanding Civil Society?*, 34 CONTEMP. SOUTHEAST ASIA 173, 173–96 (2012); Andrew Wells-Dang, *Political space in Vietnam: A view from the 'rice-roots'*, 23 PACIFIC REV. 93, 93–112 (2010).

<sup>101</sup> Morris-jung, *supra* note 24 at 405.

<sup>102</sup> John Gillespie, *The Role of Emotion in Land Regulation: An Empirical Study of Online Advocacy in Authoritarian Asia*, 52 LAW SOC. REV. 106, 106–39 (2018); John Gillespie & Quang Hung Nguyen, *Between authoritarian governance and urban citizenship: Tree-felling protests in Hanoi*, 56 URBAN STUD. 977, 977–91 (2019).

<sup>103</sup> QUINN & KIERANS, *supra* note 96 at 50–55.

thought and expression.<sup>104</sup> The site's manager, Nguyen Hue Chi, stated that "Bauxite Vietnam founders established the site because Vietnam's state-controlled media had ignored the dispute over the bauxite mine" and that "[t]he right to independent thought and free expression is enshrined in the Vietnamese constitution."<sup>105</sup> Multiple activist groups, such as the Viet Tan, have launched campaigns to oppose the arrests of bloggers who expressed critical views of the government.<sup>106</sup> They claimed that such regulatory measures violated the fundamental human rights to political expression and civil liberties of the Vietnamese people.<sup>107</sup>

Vietnamese activists also gained greater power when international actors reinforced the criticisms against Vietnamese cyber laws and regulations. Representatives of other nation-states expressed their own criticisms and attempted to impose standards and pressure the Vietnamese state to reform. For example, on 17 May 2010, an Australian Member of Parliament, Christopher Pyne, wrote to Prime Minister Nguyen Tan Dung to remind authorities that Vietnam was a signatory to the International Covenant on Civil and Political Rights (ICCPR), which expects governments to respect and uphold the civil and political rights of individuals, including the right to freedom of speech.<sup>108</sup> Pyne criticised the use of Article 88 in Vietnam's criminal code to arrest and deter peaceful democratic activists, which contradicted provisions in the ICCPR.<sup>109</sup> In another example, through the U.S. Embassy in Vietnam, the U.S. government issued its comments ON the Decree on Management, Provision and Use of Internet Services and Information (Decree 72/2013/ND-CP) in a letter addressed to the Vietnamese Ministry of Information and Communications. The letter stated that the proposed Decree would threaten the freedom of speech of internet users and hamper the development of the digital sector.<sup>110</sup> International human rights groups also expressed their opposition to multiple cyber laws in Vietnam. An example was the criticism from human rights groups against the 2008 Edict from the Ministry of Information banning the postings of political matter or issues that the government considered "secrets, subversive, or threats to national security and the social order."<sup>111</sup> The

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<sup>104</sup> Hunter Marson, *supra* note 100.

<sup>105</sup> QUINN & KIERANS, *supra* note 96 at 55.

<sup>106</sup> *Id.* at 53.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 56.

<sup>109</sup> Hunter Marson, *supra* note 100.

<sup>110</sup> Joshua Lipes, *Internet Draft Decree Slammed*, RADIO FREE ASIA ( June 7, 2012), <https://www.rfa.org/english/news/vietnam/decreed-06072012155856.html/>.

<sup>111</sup> QUINN & KIERANS, *supra* note 96 at 49.

Edict was criticised for limiting the freedom of expression of internet users, particularly bloggers.

Alongside these actors, private business actors also reinforced the criticisms and further mobilised business groups operating in Vietnam to induce responses from state actors. For example, the Asia Internet Coalition (AIC), comprised of multiple technological businesses, sent a joint letter to the Minister of Information and Communications to express its concerns that Decree 72/2013/ND-CP would impede development of the technology sector.<sup>112</sup> They argued that many articles in the Decree would sabotage opportunities for small and medium enterprises in the digital economy, raise serious data privacy and governance concerns, and damage legal transparency. Their criticisms were later endorsed by the American Chamber of Commerce Hanoi (AmCham Hanoi) and Japan's Electronics and Information Technology Industries Association (JEITA) and their members in another joint letter.<sup>113</sup> Private multinational corporations operating in Vietnam, including Google and Facebook, further involved 17 U.S. lawmakers to voice criticisms against the Cybersecurity Draft Law, and these criticisms succeeded in inducing the Vietnamese state to respond.<sup>114</sup> Lawmakers responded to criticisms by reasserting Vietnam's sovereign right to regulate cyberspace as "in any other country, the activities of foreign businesses and investors should comply with the laws of the host country," and they denied accusations of civil liberty rights infringements.<sup>115</sup> This means that by responding to criticisms from private businesses and activist actors, the Vietnamese state actors demonstrated an acknowledgement of inputs and roles of these non-state actors in the regulatory space. In turn, non-state actors, including activists and private businesses succeeded in carving their way into the cyber regulatory space. The analytical space

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<sup>112</sup> [Vietnam] AIC Submits Joint Industry Letter on Decree 72 of 2013 on the management, provision and use of Internet services and online information (Amendment) ("Decree No. 72/2013 / ND-CP) (May 2020), ASIA INTERNET COALITION (May 22, 2020), <https://aicasia.org/2020/05/25/vietnam-aic-submits-joint-industry-letter-on-decree-72-of-2013-on-the-management-provision-and-use-of-internet-services-and-online-information-amendment-decree-no-72-2013-nd-cp-may-2020/>.

<sup>113</sup> Jeff Paine et al., *Joint Industry Submission on Decree 72 of 2013 on the management, provision and use of Internet services and online information (Amendment) ('Decree No. 72/2013 / ND- CP' or 'the Draft Decree' or "Decree No. 72")*, ASIA INTERNET COALITION ( May 22, 2020), [https://aicasia.org/wp-content/uploads/2020/05/May-22-English\\_Joint-Submission-on-Decree-72-of-2013-on-the-management-provision-and-use-of-Internet-services-and-online-information-Amendment1.pdf](https://aicasia.org/wp-content/uploads/2020/05/May-22-English_Joint-Submission-on-Decree-72-of-2013-on-the-management-provision-and-use-of-Internet-services-and-online-information-Amendment1.pdf).

<sup>114</sup> Giap Trong, *Vietnam stands by its cybersecurity law amid US criticism*, VNEXPRESS (July 20, 2018, 8:20 AM), <https://e.vnexpress.net/news/news/vietnam-stands-by-its-cybersecurity-law-amid-us-criticism-3781011.html>.

<sup>115</sup> *Id.*

no longer includes only the Vietnamese state, state-owned and private businesses actors, but also Vietnamese activists, representatives of nation-states, and international human rights organisations.

The entrance of non-state actors in the cyber regulatory space induced state actors to respond with the *mentorship-as-regulation* approach. The *mentorship-as-regulation* approach refers to Vietnamese state-employed censorship as the method to cyber regulation in response to the identification of insecurity as a regulatory issue. The *mentorship-as-regulation* approach to cyber regulation in Vietnam was manifested in the identification of threats to cybersecurity as the regulatory issue, security as the objective, and censorship as the strategy to regulate cyberspace. First, the opposition of activist actors against the Vietnamese state in the cyber regulatory space precipitated state actors' proclamations of security concerns, which was exhibited in legislation passed during this period. For example, Decree 97 on the management, provision, and use of internet services described security threats as political or social commentary from blogs and subsequently barred bloggers from disseminating press articles, literary works, or other publications prohibited by the Press Law.<sup>116</sup> A subsequent Decree, number 72, replaced Decree 97 and expanded security threats to include any dissenting content on blogs to all social media networks.<sup>117</sup> The security concerns specifically described the dissidents and dissenting behaviours on cyberspace manifested by activist actors.

Second, the Vietnamese state emphasized that the security of cyberspace was the key objective in the second period. This emphasis was exhibited in all cyber legislation established in the second period. The two cyberlaws issued after 2009, including the Law on Cyber Information Security and the Law on Cybersecurity, both highlighted the security objective. In proposing the Telecommunication Law in 2009, the Standing Committee of the National Assembly stated the following: "the management of telecommunications is not only related to the socio-economic field but is also related to security, defence and the protection of national interests in telecommunications."<sup>118</sup> In

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<sup>116</sup> NGHỊ ĐỊNH SỐ 97/2008/NĐ-CP VỀ QUẢN LÝ, CUNG CẤP, SỬ DỤNG DỊCH VỤ INTERNET VÀ THÔNG TIN ĐIỆN TỬ TRÊN INTERNET [DECREE NO. 97/2008/ND-CP ON THE PROVISION OF INFORMATION ON THE PERSONAL ELECTRONIC INFORMATION PAGE], (2008).

<sup>117</sup> NGHỊ ĐỊNH SỐ 72/2013/NĐ-CP VỀ QUẢN LÝ, CUNG CẤP, SỬ DỤNG DỊCH VỤ INTERNET VÀ THÔNG TIN TRÊN MẠNG [DECREE NO. 72/2013/ND-CP ON THE MANAGEMENT, PROVISION, AND USAGE OF INTERNET SERVICES AND ONLINE INFORMATION], (2013).

<sup>118</sup> Thanh Ha & Manh Hung, *Dự thảo Luật Viễn thông: Thể hiện chính sách phát triển viễn thông của Nhà nước* [Draft of the Telecommunication Law: Demonstrates the State's telecommunications development policy], ONLINE PORTAL OF THE

conjunction with these cyber laws, six Decrees passed from 2008 to 2018 stated the objectives of maintaining national security, social order, and public safety.<sup>119</sup>

Third, state actors enacted the regulatory measure of censoring content online to regulate cyberspace. Since Facebook was the platform with the greatest number of users, the Vietnamese government established a firewall to filter content on Facebook.<sup>120</sup> However, the anonymity and the seemingly limitless content meant that this conventional measure was unable to filter out all unfavourable content. In 2010, when overseas political actors used Facebook Groups and Pages to call on the Vietnamese to overthrow their government, the Vietnamese state briefly banned Vietnamese people from accessing Facebook.<sup>121</sup> Similarly, the anonymous nature of the internet enabled users to change their settings to access Facebook from alternate IP addresses. Currently, the Vietnamese state has apparently abandoned this approach, since Facebook is now easily accessible on or is unblocked from all of Vietnam's internet service providers, with no sign of filtering.<sup>122</sup>

Another regulatory measure employed by the Vietnamese government in the second period was cyber-attacks. Several investigations by Google and McAfee concluded that most cyber-attacks against Vietnamese blogs, with politically dissenting messages used a botnet malware (W32/Vulvanbot) disguised as Vietnamese

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NATIONAL ASSEMBLY OF THE SOCIALIST REPUBLIC OF VIETNAM (2009), <http://www.quochoi.vn/tintuc/Pages/tin-hoat-dong-cua-quoc-hoi.aspx?ItemID=3047>.

<sup>119</sup> NGHỊ ĐỊNH SỐ 97/2008/NĐ-CP VỀ QUẢN LÝ, CUNG CẤP, SỬ DỤNG DỊCH VỤ INTERNET VÀ THÔNG TIN ĐIỆN TỬ TRÊN INTERNET [DECREE NO. 97/2008/ND-CP ON THE PROVISION OF INFORMATION ON THE PERSONAL ELECTRONIC INFORMATION PAGE], (2008).; NGHỊ ĐỊNH SỐ 25/2011/NĐ-CP HƯỚNG DẪN LUẬT VIỄN THÔNG [DECREE NO.25/2011/NĐ-CP ON THE IMPLEMENTATION OF THE TELECOMMUNICATIONS LAW], (2011).; NGHỊ ĐỊNH SỐ 72/2013/NĐ-CP VỀ QUẢN LÝ, CUNG CẤP, SỬ DỤNG DỊCH VỤ INTERNET VÀ THÔNG TIN TRÊN MẠNG [DECREE NO. 72/2013/ND-CP ON THE MANAGEMENT, PROVISION, AND USAGE OF INTERNET SERVICES AND ONLINE INFORMATION], (2013).; NGHỊ ĐỊNH SỐ 72/2015/NĐ-CP VỀ QUẢN LÝ HOẠT ĐỘNG THÔNG TIN ĐỐI NGOẠI [DECREE NO. 72/2015/NĐ-CP ON MANAGEMENT OF EXTERNAL INFORMATION ACTIVITIES], (2015).; NGHỊ ĐỊNH SỐ 142/2016/NĐ-CP VỀ NGĂN CHẶN XUNG ĐỘT THÔNG TIN TRÊN MẠNG [DECREE NO. 142/2016/NĐ-CP ON THE PREVENTION OF CONFLICTING INFORMATION ONLINE], (2016).; NGHỊ ĐỊNH SỐ 49/2017/NĐ-CP VỀ THẮT CHẶT QUẢN LÝ THUÊ BAO DI ĐỘNG TRẢ TRƯỚC, LOẠI BỎ TÌNH TRẠNG SIM RÁC, SIM ẢO [DECREE NO. 49/2017/NĐ-CP ON THE MANAGEMENT OF PRE-PAYED MOBILE CONTRACTS, REMOVING WASTE SIM STATUS, VIRTUAL SPAM]

<sup>120</sup> GRAY, *supra* note 24 at 4.

<sup>121</sup> QUINN AND KIERANS, *supra* note 96.

<sup>122</sup> GRAY, *supra* note 24 at 4.

language software VPSKeys.<sup>123</sup> This malware penetrated blog sites, gathered information on users, and then employed direct Denial of Service attacks against users who attempted to access the sites. Furthermore, the Vietnamese government employed the method of arresting political dissidents, particularly bloggers who had voiced their opposition as part of the censorship.<sup>124</sup> The attempts to implement censorship for the purpose of regulating cyberspace were clear. The targeting of bloggers and online activists demonstrated that the adverse relationship between the state and Vietnamese activists shaped the censorship-as-regulation approach.

### C. Organizational Structure of Regulatory Actors

In response to the shifting dynamics in the cyber regulatory space, the Vietnamese state sought to enhance its organizational structure by deputising numerous state bodies with responsibilities and authorities to regulate cyberspace. Table 1 presents all the state regulators during the second period, as described by each piece of Vietnamese cyber legislation.

**Table 1. State regulators of cyberspace in the second period**

Legislation	Content	Regulators
41/2009/QH12	Law on Telecommunications	<ul style="list-style-type: none"> <li>- Ministry of Information and Communications</li> <li>- Ministry of Public Security</li> <li>- Ministry of National Defense</li> <li>- Ministry of Industry and Trade</li> <li>- Ministry of Finance</li> <li>- Ministry of Science and Technology</li> <li>- Ministry of Construction</li> <li>- Ministry of Transport</li> </ul>
86/2015/QH13	Law on Cyber Information Security	<ul style="list-style-type: none"> <li>- Ministry of Information and Communications</li> <li>- Ministry of Public Security</li> <li>- Ministry of National Defense</li> <li>- Ministry of Home Affairs</li> <li>- Ministry of Science and Technology</li> <li>- Ministry of Education and Training</li> <li>- Ministry of Labor, War Invalids and Social Affairs</li> <li>- Ministry of Education and Training</li> </ul>

<sup>123</sup> Carlyle A. Thayer, *The Apparatus of Authoritarian Rule in Vietnam*, in *POLITICS IN CONTEMPORARY VIETNAM* 135–161, 148 (Jonathan London ed., 2014).

<sup>124</sup> GRAY, *supra* note 24 at 9.

Decree 97/2008/ND-CP	The Decrees on management, provision, and use of internet services	<ul style="list-style-type: none"> <li>- Ministry of Information and Communication</li> <li>- Ministry of Public Security</li> <li>- Ministry of Finance</li> <li>- Ministry of Planning and Investment</li> <li>- Ministry of Home Affairs</li> </ul>
Decree 25/2011/ND-CP	Decree on the implementation of the Telecommunications Law	<ul style="list-style-type: none"> <li>- Ministry of Information and Communications</li> <li>- Ministry of Defense</li> <li>- Ministry of Industry and Trade</li> <li>- Ministry of Foreign Affairs</li> <li>- Ministry of Finance</li> <li>- Ministry of Construction</li> <li>- Ministry of Transport</li> </ul>
Decree 72/2013/ND-CP	The Decrees on management, provision, and use of internet services	<ul style="list-style-type: none"> <li>- Ministry of Information and Communications</li> <li>- Ministry of Public Security</li> <li>- Ministry of Defense</li> <li>- Ministry of Education and Training</li> <li>- Ministry of Finance</li> <li>- Ministry of Labor, War Invalids and Social Affairs</li> <li>- Ministry of Post and Telematics,</li> <li>- Ministry of Culture and Information</li> <li>- Ministry of Planning and Investment</li> </ul>
Decree 72/2015/ND-CP	Decree on management of external information activities	<ul style="list-style-type: none"> <li>- Ministry of Information and Communication</li> <li>- Ministry of Public Security</li> <li>- Ministry of Foreign Affairs</li> <li>- Ministry of Culture, Sports and Tourism</li> <li>- Ministry of Finance</li> <li>- Ministry of Home Affairs</li> </ul>
Decree 142/2016/ND-CP	Decree on the Prevention of Conflicting Information online	<ul style="list-style-type: none"> <li>- Ministry of Information and Communication</li> <li>- Ministry of Public Security</li> <li>- Ministry of Defense</li> <li>- Ministry of Education and Training</li> <li>- Ministry of Foreign Affairs</li> <li>- Ministry of Science and Technology</li> <li>- Ministry of Finance</li> </ul>

During the second period, Vietnamese state actors no longer had the organizational capacity to dominate the cyber regulatory space when new non-state actors entered en masse. Non-state actors—including activists, representatives of nation-states, international

human rights groups, and private business groups—entered the cyber regulatory space. Vietnamese non-state actors gained greater organizational capacity by aligning with international actors, including human rights groups and business groups, to induce state actors to respond. This enhancement of their organizational capacity shifted the power dynamics between state and non-state actors. The dynamic shifted away from the state dominating the regulatory space. The state became the central regulator, with different actors contesting the state's action or align with it. Here, the divide between public and private actors deepened. On the one hand, private actors aligned their interests with Vietnamese activists in upholding rights for Vietnamese users. On the other hand, the state, state regulators and state-owned businesses struggled to maintain dominance of the regulatory space. In response, the state inserted new state regulators into the cyber regulatory space. The substantial boost of state regulators suggested an attempt on the part of the Vietnamese state to counter the organizational capacity of non-state actors. The large number of state regulators enhanced the scales, resources, and complex hierarchies of the state to enforce regulatory measures and counter the cooperation of non-state actors. The expansion of state regulators suggested an attempt on the part of the Vietnamese state to increase its organizational capacity. These dynamics shaped the censorship-as-regulation approach enacted by the state.

The continual power struggle between private and state-owned enterprises further shaped the 2009 Law on Telecommunications. As previously discussed, the shared interest in economic development between state-owned businesses, private businesses, and the state shaped the development-as-regulation approach in the first period. This shared interest extended the development-as-regulation approach during the second period. However, state-owned businesses in the second period no longer enjoyed near monopoly in the cyber regulatory space. Private businesses gained more power to contest this monopoly as Vietnam enacted its commitments with the WTO. Vietnam offered all WTO members more favourable market access conditions than before. The commitment allowed private businesses to enter the telecommunications sectors. These shifting dynamics shaped the first separate comprehensive Law on Telecommunications, 41/2009/QH12. This Law abandoned the notion that 'the national post and telecommunications network is a centralised and unified communication network nationwide, organised exclusively by the State and assigned to the post office for management,' as set out in previous Decrees on telecommunications.

##### V. THE THIRD PERIOD OF THE VIETNAMESE CYBER REGULATORY REGIME

### A. Historical Timing of a Large-Scale Protest

Following the expansion of internet technologies in the second period, social media proliferated in the third period. By January 2018, Vietnam ranked seventh in the world for its number of Facebook users, after India, the United States, Brazil, Indonesia, Mexico, and the Philippines.<sup>125</sup> On average, each Vietnamese social media user spends 2.5 hours per day on Facebook, twice the amount of time they spend watching television. Some 84 percent of young people in Vietnam ages 18 to 29 get their daily news from social media.<sup>126</sup> Statistics further demonstrate that Facebook is the top social media platform in Vietnam, with 94 percent of respondents stated that they used Facebook, followed by Zalo and YouTube.<sup>127</sup> By 2018, social media had become a widespread phenomenon in Vietnam. The boom of social media simultaneously translated to the unprecedented growth of opposition forces on the platform, seriously challenging the single-party structure of Vietnam.<sup>128</sup>

In 2018, social media facilitated large-scale opposition to the Vietnamese government in the form of petitions and protests. On 21 May 2018, the National Assembly of Vietnam commenced its fifth meeting in Hanoi to review and approve eight draft laws, including the draft Law on Special Administrative and Economic Zones (SAEZs) and the Law on Cybersecurity.<sup>129</sup> The SAEZs was introduced to boost investments in three economic zones. It contained measures such as a 99-year land lease with tax exemption and the legalisation of unlawful activities such as casino services.<sup>130</sup> The SAEZs sparked intense opposition from the public. Protestors argued that the SAEZs would

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<sup>125</sup> J. Degenhard, *Number of internet users in Vietnam from 2015 to 2022 (in millions)*, STATISTA 1 (July 20, 2021), <https://www.statista.com/forecasts/1147008/internet-users-in-vietnam>.

<sup>126</sup> Amy Mitchell et al., *Publics globally want unbiased news coverage, but are divided on whether their news media deliver*, PEW RESEARCH CENTER (2018), <https://www.pewresearch.org/global/2018/01/11/publics-globally-want-unbiased-news-coverage-but-are-divided-on-whether-their-news-media-deliver/>.

<sup>127</sup> Minh-Ngoc Nguyen, *Leading social media apps in Vietnam in Q4 2021*, STATISTA (Feb 25, 2022), <https://www.statista.com/statistics/941843/vietnam-leading-social-media-platforms/>.

<sup>128</sup> Mach and Nash, *supra* note 22 at 10.

<sup>129</sup> Hoang Thu, *Vietnam set to pass laws on cyber security, special economic zones at 20-day meeting*, VNEXPRESS (May 20, 2018, 8:39 PM), <https://e.vnexpress.net/news/news/vietnam-set-to-pass-laws-on-cyber-security-special-economic-zones-at-20-day-meeting-3752392.html>.

<sup>130</sup> Vaibhav Saxena, *Vietnam's special administrative and economic zones, a close look*, VNEXPRESS (Aug. 27, 2018, 9:33 PM), <https://e.vnexpress.net/news/business/economy/vietnam-s-special-administrative-and-economic-zones-a-close-look-3799471.html>.

allow Chinese investors to own land for up to nearly a century, encroaching upon Vietnamese territory under the name of investments.<sup>131</sup> At the same time, some protestors also opposed the draft law on cybersecurity.<sup>132</sup> They complained that the draft law was copied from China's cybersecurity law and would limit freedom of expression and other civil liberties of the Vietnamese people.<sup>133</sup>

With Facebook users projected to reach 43.5 million by 2025,<sup>134</sup> Vietnamese people increasingly use the platform to express their opposition, share a petition that attracted fifty thousand signatures within a week, and organise demonstrations.<sup>135</sup> The anti-China sentiment spread quickly, motivating opposition to both the SAEZs and the Cybersecurity draft laws. In early June, people in 10 major cities took to the streets to protest, including the two largest cities of Hanoi and Ho Chi Minh.<sup>136</sup> On June 9, 2018, the Vietnamese government and the National Assembly Standing Committee agreed to delay adoption of the SAEZs draft law. Yet, demonstrations continued. On June 10 and 11, 2018, a violent riot erupted in the southern province of Binh Thuan, where existing anger over industrial pollution, land disputes, and an anti-Chinese sentiment spilled over into opposition to the Cybersecurity law.<sup>137</sup> According to some commenters, this may have been the largest public mobilisation since Vietnam's reunification in 1975.<sup>138</sup> On June 12, 2018, 86 percent of the National Assembly MPs voted to pass the revised draft of the Cybersecurity Law.<sup>139</sup>

### *B. Power Relations between State and Non-State Actors*

The power relations between state, non-state, and hybrid actors shifted once more. The large-scale oppositions in June 2018 exhibited an alignment between the activists, Vietnamese people, state-owned businesses, private businesses, foreign businesses, and non-profit organisations to oppose the Cybersecurity Law. The Vietnamese

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<sup>131</sup> Nguyen-Thu, *supra* note 2 at 895.

<sup>132</sup> Hai Le, *Vietnam's SEZ protests, the causes and the results*, VNEXPRESS (2018), <https://e.vnexpress.net/news/news/vietnam-s-sez-protests-the-causes-and-the-results-3765066.html>.

<sup>133</sup> Nguyen-Thu, *supra* note 2 at 905.

<sup>134</sup> Degenhard, *supra* note 125.

<sup>135</sup> Nguyen-Thu, *supra* note 2 at 902.

<sup>136</sup> Atsushi Tomiyama, *Vietnam's economic zones derailed by anti-China protests*, NIKKEI ASIA (2018), <https://asia.nikkei.com/Politics/International-relations/Vietnam-s-economic-zones-derailed-by-anti-China-protests>.

<sup>137</sup> Giang Nguyen, *Vietnam detains 100 after anti-China economic zone protests turn violent*, BBC NEWS (2018), <https://www.bbc.com/news/world-asia-44436019>.

<sup>138</sup> Nikkei, *Vietnam's cybersecurity law sparks concerns from businesses*, NIKKEI ASIA (2018), <https://asia.nikkei.com/Politics/Vietnam-s-cybersecurity-law-sparks-concerns-from-businesses>.

<sup>139</sup> Le, *supra* note 132.

people, activists, and non-profit organisations criticised the Cybersecurity Law, arguing that it eroded civil liberty rights. A petition signed by 60,000 Vietnamese people and 22 non-profit organisations further argued that “the Draft Law had the potential to violate the basic rights of citizens,” including the violations of “privacy and confidentiality, as the bill requires internet service providers to verify users’ personal information and provide this information to authorities upon request without being approved by courts,” as well as freedom of expression.<sup>140</sup>

All of the business actors criticised the Law as sabotaging the economic development of Vietnam. For example, 13 state-owned and private businesses involved in the digital economy, such as the Financing and Promoting Technology Corporation (FPT), the VNG Corporation, Mobifone, Panasonic, Toshiba and Lazada, drafted a joint letter to the National Assembly calling for a delay of the vote.<sup>141</sup> Foreign information technology enterprises, including Facebook and Google, criticised the Law as impeding their investments in the economy. For example, they opposed the Law’s requirements of all enterprises providing online services to locally store user data and maintain their servers in Vietnam.<sup>142</sup> The data localization requirements would impede free flow of data across borders, creating obstacles for domestic economic developments.<sup>143</sup> The Vietnam Digital Communications Association estimated that the Law had the potential to reduce the nation’s GDP growth by 1.7 percent and cut foreign investment by 3.1 percent.<sup>144</sup>

The dissociation of the state and other actors shaped a new regulatory response by the Vietnamese state. The state employed the surveillance-as-regulation approach to cyber regulation during the third period. First, cyber legislation established in the third regulatory period laid down the legal platform to implement an overarching system of surveillance. The vague and dispersed articles in the 2018 Cybersecurity Law formed the legal foundation for a mass surveillance system. In fragmented articles, the Law described the measures for

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<sup>140</sup> Kiến nghị Không thông qua Dự thảo Luật An ninh mạng [Petition Not to pass the Draft Law on Cybersecurity], CHANGE (2018), <https://www.change.org/p/ki%E1%BB%82%99n%E1%BB%97%99ng%E1%BB%97%99-qua-d%E1%BB%97%99-th%E1%BB%97%99o-lu%E1%BB%97%99t-an-ninh-m%E1%BB%97%99ng>.

<sup>141</sup> Nikkei, *supra* note 139.

<sup>142</sup> John Reed, *Google and Facebook push back on Vietnam’s sweeping cyber law*, FINANCIAL TIMES, December 13, 2018, <https://www.ft.com/content/2c1e4640-fe78-11e8-aebf-99e208d3e521>.

<sup>143</sup> Han Wei Liu, *Data localization and digital trade barriers: ASEAN in megaregionalism*, 128 ASEAN LAW NEW REG. ECON. ORDER GLOB. TRENDS SHIFTING PARADIG. 371–391, 378–379 (2019).

<sup>144</sup> Dezan Shira, *Vietnam Approves New Law on Cybersecurity*, VIETNAM BRIEFING (2018).

protecting cybersecurity through surveillance acts such as evaluation, assessment, inspections, supervision of cybersecurity, as well as the “collecting [of] e-data relevant to acts in cyberspace that were infringing on national security, social order and safety or the lawful rights and interests of agencies, organisations, and individuals.”<sup>145</sup> These measures of evaluation, assessment, inspection, supervision, and collection of data are applied to a wide range of information systems and technology; information in cyberspace classified as state secrets, work secrets, business secrets, personal secrets, family secrets, and private life in cyberspace; conduct in cyberspace, and; electronic media. In essence, the 2018 Cybersecurity Law assigns surveillance as a regulatory measure and applies it to all technologies, systems, information, conduct, and media on cyberspace.

The measures for surveillance also appear in Decree number 91/2020/NĐ-CP on the prevention of spam messages, spam emails, and spam calls.<sup>146</sup> The Decree describes the measures to prevent spam from tracking, monitoring, and sharing information and data about the source of spam messages, emails, and calls. The Decree legalised measures for receiving and processing spam messages, emails, and calls; supervising advertising services via text messages, emails, and phone calls, and; building and implementing systems to combat and prevent spam messages, spam emails, and spam calls. It enabled authorities to monitor all messages, emails, and phone calls to prevent and cease spam. Moreover, the Decree described another regulatory measure that involves building and implementing systems and technologies to combat and prevent spam messages, emails, and calls. One clause in Article 9 specifies that the technologies should include “artificial intelligence technology, big data, and advanced technology solutions.”<sup>147</sup> Academic studies have raised concerns over the use of artificial intelligence and big data for mass surveillance.<sup>148</sup> While it is unclear whether this was the intention, Decree number 91/2020/NĐ-CP has legalised the surveillance of all messages, emails, and phone calls in Vietnam, and the building of advanced technologies that can be used for mass surveillance.

### *C. Organizational Structure of Regulatory Actors*

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<sup>145</sup> LUẬT AN NINH MẠNG [LAW ON CYBERSECURITY], 1–24 4 (2018), <https://data.allens.com.au/pubs/pdf/priv/cupriv22jun18.pdf>.

<sup>146</sup> NGHỊ ĐỊNH SỐ 91/2020/NĐ-CP VỀ CHỐNG TIN NHẮN RÁC, THƯ ĐIỆN TỬ RÁC, CUỘC GỌI RÁC [DECREE NO. 91/2020/ NĐ-CP ON THE PREVENTION OF SPAM MESSAGES, SPAM EMAILS, AND SPAM CALLS], (2020).

<sup>147</sup> *Id.* at Clause 6, Article 9.

<sup>148</sup> Helbing Dirk et al., *Will democracy survive big data and artificial intelligence*, TOWARDS DIGITAL ENLIGHTENMENT 73–98, 74 (2019).

During the third period, the Vietnamese state granted access to the cyber regulatory space to the Vietnamese people. In June 2017, the Ministry of Public Security established a portal to collect people's comments on the draft Cybersecurity Law.<sup>149</sup> The People's Public Security Newspaper and multiple state-owned newspapers advertised that "the draft Law on Cyber Security was posted on the web portal of the Ministry of Public Security from June 8, 2017, for comments within two months from the date of posting. Comments should be sent to the email address: [thongtin@csd.gov.vn](mailto:thongtin@csd.gov.vn) before 8-8-2017."<sup>150</sup> These were official consultative sites for the general population of the Vietnamese people to express their opinions on the draft law.

This consultative measure was repeated in November 2018 following the demonstrations.<sup>151</sup> Publicly discussing this site, "the Prime Minister and Minister of Public Security Tô Lâm said that he would develop a law in accordance with the Law on the Promulgation of Legal Documents; posting for public comments of organisations and individuals on the Portal of the Ministry of Public Security; invite a number of related agencies and organizations for comments."<sup>152</sup> However, there is no publicised document presenting the comments by the people and the extent to which these comments have been adopted. The Vietnamese people also collectively entered the cyber regulatory space by opposing cyber laws and regulations. The protests in June 2018 demonstrated the mass entry of the Vietnamese people in the cyber regulatory space.

The Vietnamese state further expanded the regulatory powers to a broad range of state regulators. The legislation discussed above assigned surveillance powers and responsibilities to multi-level regulators, from service providers to state ministries. The 2018 Cybersecurity Law assigned the powers and responsibilities to evaluate, assess, inspect, investigate, supervise, respond, and remedy cybersecurity incidents to three core actors, including the Ministry of Information and Communications, the Ministry of Public Security, and the Ministry of National Defence. Other functional ministries are also expected to manage, cooperate, and share resources with these three

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<sup>149</sup> Lấy ý kiến rộng rãi về dự thảo nghị định Luật An ninh mạng, [Getting broad comments on the draft Cybersecurity Law], ZING NEWS (2018), <https://zingnews.vn/lay-y-kien-rong-rai-ve-du-thao-nghi-dinh-luat-an-ninh-mang-post889542.html>.

<sup>150</sup> *Id.*

<sup>151</sup> Lấy ý kiến nhân dân đóng góp cho Dự thảo Nghị định về Luật An ninh mạng, [Collecting people's comments for the Draft Decree of the Cybersecurity Law], , PEOPLE'S POLICE NEWSPAPER ONLINE (2018), [http://congan.com.vn/tin-chinh/lay-y-kien-nhan-dan-dong-gop-cho-du-thao-nghi-dinh-ve-luat-an-ninh-mang\\_64613.html](http://congan.com.vn/tin-chinh/lay-y-kien-nhan-dan-dong-gop-cho-du-thao-nghi-dinh-ve-luat-an-ninh-mang_64613.html).

<sup>152</sup> *Id.*

core ministries. Additionally, cyberspace service providers and information system administrators have responsibilities and powers to enact surveillance measures. For example, the 2018 Cybersecurity Law requires these two actors to monitor, provide warnings and plans, and respond to cybersecurity incidents; block and filter unlawful information, authenticate information, and verify identities of users, and; collect, analyse, process, and store data of personal information and service users in Vietnamese territory to allow for inspection by state authorities at any time. This expansion of cyber regulators demonstrated the dissociation of the state from other non-state actors, including state-owned businesses.

#### CONCLUSION

This study analysed the ways in which different domestic actors in contemporary Vietnam participate in the law-making and regulatory processes through the history of Vietnam's cyber regulatory regime. The picture of the Vietnamese cyber regulatory regime through three periods demonstrates that different social and political conditions have enabled non-state actors to shape the cyber regulatory regime in Vietnam. One key reason for this phenomenon is that non-state actors in Vietnamese society are now equipped with cyberspace technologies to participate in the law-making and regulatory processes. They have been increasingly active in shaping cyber laws, regulatory measures, and approaches in Vietnam to meet their interests. The most effective means non-state and hybrid actors have employed to shape the cyber regulatory regime has been by inducing the state to respond with cyber laws, regulatory measures, and approaches. While contemporary Vietnam retains a socialist government with a single-party system, the state-society relations in contemporary Vietnam is far from simply autocratic. An analysis of legal documents and discourses related to cyber regulation found that state-society relations have been dynamic and shifting in different conditions over three time periods.

The Vietnamese state is also far from a rigid authoritarian actor. State actors have consulted hybrid and non-state actors when building the cyber regulatory regime, particularly in the drafting of cyber legislation. Vietnamese state actors responded promptly when social and political conditions change, forming new state-society relations as power relations shift. State actors also adapt by abandoning ineffective regulatory measures (such as the banning of Facebook) and experiment with new technologies (such as big data and artificial intelligence). Yet, in their efforts to respond to non-state and hybrid actors, state actors sought to maintain dominance and control over the cyber regulatory space. In the early days of the first period from 1997 to 2007, state

actors maintained their dominance by restricting private enterprises access to the cyber regulatory space. They did so by only including state-owned businesses in official consultative forums. State actors could not maintain this dynamic by the end of 2007, when Vietnam became a member of the WTO.

Following the country's membership in the WTO, cyber technologies in Vietnam boomed and enabled Vietnamese activists to enter the cyber regulatory space. The activists took on social media to disseminate information surrounding their critical opposition, organised petitions, and demonstrations. In response, the Vietnamese state employed the censorship-as-regulation approach to counter the increased opposition. These events occurred in the second period, from 2008 to 2017, opening doors for more actors to enter the cyber regulatory space. Activists engaged human rights organisations and representatives of national states to criticise the cyber laws and regulatory measures passed by the state. The cyber regulatory space in the second period included a broader range of actors. The public versus private divide was emphasized. Interests of the Vietnamese state and state-owned enterprises were in contrast with interests of civil society, private businesses, and associated international organisations.

In 2018, a large portion of Vietnamese people entered the cyber regulatory space by opposing the state's passage of the 2018 Cybersecurity Law. The Vietnamese state faced a large-scale demonstration, and in response, it adopted the surveillance-as-regulation approach to cyber regulation. The third period of cyber regulation is characterised by a combination of the censorship-as-regulation and surveillance-as-regulation approaches. The institutional dynamics of the third period pivoted significantly from the public-private divide. State-owned businesses aligned with private enterprises, human rights organisations, activists, and the people to oppose the state's decision to pass the Cybersecurity Law.

Another important insight of this study is that regulatory thinking is shaped not only by interests and objectives, but also by the shifting context, policy preferences, and interactions between domestic actors during different time periods. In the case of Vietnam, its cyber regulatory regime has undergone three shifting paradigms, generating three different approaches to cyber regulation. Importantly, the study contributes a map of the cyber regulatory regime and calls for future studies to account for the sociological factors that shape cyber laws and regulations in Vietnam.