

## SOCIAL ACTIVITIES OF THE RELIGIOUS ORGANIZATIONS IN VIETNAM: RESEARCH ON THE RELIGIOUS LEGAL PERSON

**Abstract:** *The legal documents of the Party and State of Vietnam in the field of religion (before enforcement of the Law on Belief and Religion No. 02/2016/QH14) did not refer to the “religious juridical person” although the law recognized religious organizations and authorized them to register their religious activities according to the law. The Law on Belief and Religion, the latest legal document, mentioned the legal person of religious organizations when they are recognized by the State agency. After enforcement of the Law on Belief and Religion, religious organizations could participate in civil service, social activities beside religious activities. However, the religious legal person in Vietnam is different from the world so it will be discussed in this article. The article addresses some of the following issues: What is Legal Person and Religious Legal Person? Religious legal person through social activities in Vietnam: in comparison with the world.*

**Keywords:** *Social activity; religious organization; religious legal person.*

### 1. Juridical person

Juridical person is a vague legal term, because the dictionary itself and the specialized laws do not define what is a juridical person, they just indicated the conditions of being recognized as a juridical person. Therefore, there are many different explanations of a juridical person.

There is a view that a juridical person does not mean a person (one individual), because clause 1, Article 74 of the Civil Code of the

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Socialist Republic of Vietnam in 2015 regulates that the properties of a juridical person must be independent of the assets of an individual and of other legal persons, so if a legal person is admitted for one person, his property coincides with the property of the legal person. Therefore, a juridical person is just given to *an organization* or *a group of people* because it fully satisfies the conditions to be recognized as a legal person. It is an abstract subject because it is associated with an organization, an association. Although that organization must have a representative person, the representative is not responsible for the legal person of the organization that he/she represents, including its property. A juridical person takes responsibility for its property and within the limits of the legal person's assets (it means that the members or the legal representatives are just responsible for the capital contributed to the organization and it is necessary to repay this asset), therefore, the capacity and responsibility of a juridical person is considered as limited liability.

According to the provisions of *the Civil Code (Bộ luật Dân sự)* and *the Enterprise Law (Luật Doanh nghiệp)*, a juridical person is understood as *organizations* with independent legal status to participate in other legal activities such as politics, economy and society, etc.,..The legal status is recognized by the State as *an organization (or a group of people)*, it is capable of existing, operating independently and taking legal responsibility. An organization is called a juridical person (has similar manifestations as a natural person, as a person in the legal aspect rather than a human entity- con người thực thể).

An organization is recognized as a legal person when satisfying the four conditions as follows:

(1) Must be existed in a defined form, having a name, the name of a legal person as prescribed by law. The legal person's name is recognized and protected by law.

An organization recognized as a legal person must be permitted the establishment, registered or recognized by a competent agency.

Therefore, the organization is recognized as having legal status since the date of issuance of the certificate.

(2) Must have a strict organizational structure to ensure that the organization has the ability to operate consistently the legal activities regulated in the charter of the legal person or in the decision to establish a legal regulate.

*Must have a representative* (in accordance with the law) to act on behalf of the legal person to make transactions.

A legal person with its seal is managed and used by the representative of the organization.

(3) Having independent property of the other individuals and organizations; and taking responsibility for that property.

Accordingly, assets of a legal person are owned by the legal person (or assigned by the state), are not the property of the legal person's representative.

That property must be completely separated from the assets of the members. This is a huge difference to distinguish between a legal person and a natural person.

(4) A legal person can independently participate in legal relations through representatives (according to law). A representative is an individual who has the right to perform all civil transactions derived from operation. Participating as a plaintiff, a defendant when all rights of legal person are violated. There are rights and obligations related to the court, arbitration and other rights and obligations in accordance with the law.

In case the representative is arrested, imprisoned, died or no longer able to represent, the legal person has the right to elect a new representative to continue its work, it means that the legal person is not dependent on any individual.

Thus, a legal person of a civil organization (or a political-social organization) is an acknowledgment of the law on the legal status of that organization, so that legal person can participate in social activities which are not prohibited by law.

## 2. The religious juridical person

What is a religious legal person that is not defined in all legal documents of the Vietnamese Party and State on religion. Many countries in the world do not mention “a religious legal person” even though their laws have acknowledged (or recognized) religious organizations, allowed them to register religious practices and activities in accordance with the current law.

Recently, the Law on Belief and Religion No.02/2016/QH14 was promulgated by the National Assembly of the Socialist Republic of Vietnam in November 2016 and has been taken effect since January 1, 2018. As the latest legal document mentions the juridical personality of religious organizations and religious affiliates

as follows: A religious organization becomes *a non-commercial juridical person* upon its accreditation by the competent government authority<sup>1</sup>.

*The Law on Belief and Religion* just indicates the conditions and the competent government authority recognizes the juridical person of religious organizations and religious affiliates, however, what is a non-commercial juridical person must refer to *the Civil Code* in 2015, Article 75, 76 explains the difference between a commercial juridical person and a non-commercial juridical person, whereby the main objective of a non-commercial juridical person do not seek for profit; If there is a profit, it will not be divided among members. The non-commercial juridical persons consist of the state agencies, people's armed forces units, political organizations, socio-political organizations, political-social-occupational organizations, social organizations, social-professional organizations, social funds, charitable funds, social enterprises and other non-commercial organizations.

Based on the above legal documents, religious organizations in Vietnam are recognized the legal person (in religious activities), but religious organizations are not allowed to represent their legal person to carry out civil transactions with commercial aim, business for profit. If establishing company or enterprise, it will be a *social*

*enterprise* (doanh nghiệp xã hội), a relatively new legal term mentioned in Article 76, *the Civil Code* in 2015, it means that a business operates to fulfill social objectives, its profits are used to reinvest in that goal or the community, instead of profits for shareholders or owners.

Before promulgation of the Law on Belief and Religion, religious organizations have not yet been recognized as a legal person, they have the rights to register for religious practices and activities. After the Law on Religion and Religion was promulgated and take effect, religious organizations wait for *the Law on Belief and Religion* to regulate the legal person of religious organizations so they could represent their legal person to participate in civil transactions, the other social activities out of the religious activities and providing public services to society such as education, health care, social security, etc.,...

However, the issue of religious legal person in social activities and public services in Vietnam is still different from that one of the world. It will be discussed below.

### **3. The religious juridical person in social activities in the world**

The religious organizations in the world have the juridical person (recognized by law and protected by freedom of religion). They are guaranteed the rights and obligations of other legal person, specifically, to participate in all economic, political, social, cultural, educational, medical, charitable activities that the religious organization can prove its competence or strength and meet the conditions prescribed by law, regardless of commercial or non-commercial legal person.

In developed countries, the investments in infrastructure projects such as roads, ports, bridges, sewers, schools, hospitals, electricity and water supply), in public services such as health care and education require large capital so the State often calls for social capital to implement these projects included capital and financial resources of religious organizations. The religious organizations in the United States often own economic development projects and provide very

effective social services in many cities such as Chicago (Illinois), Baltimore (Maryland), Harlem (New York), Cleveland (Ohio), Los Angeles (California), Austin (Texas), and Atlanta (Georgia). More than 400 ministries and departments in the United States are co-involved as a partner and committed to implementing initiatives of the *Christian Community Development Association* in order to restore, embellish urban, treat waste water. *Walt Disney* and *Atlantic Richfield*, *Ford Foundation* have funded church projects in providing social services such as helping immigrants integrate into the community, free education for poor children, helping the African Americans youth, teenagers find jobs.

Drug addicts, lonely old people, unemployed women, prostitutes, women who have been sexually abused, suffered from domestic violence, etc., can be received support and funding from religious organizations.

In Muslim countries, an Islamist credit organization can provide a source of capital for businesses to invest in infrastructure on the basis of profit-sharing. Islamist credit investment companies operate as mutual funds. They invest their customers' money in common shares or use them to make a profit through financial methods as the functions of bank that are performing.

The system of colleges and universities established and educated by religious organizations (Catholicism, Protestantism) is present on all continents. The number of students attending the schools of church is getting more and more than the public schools because where teachers consider their work as a part of a sacred appeal, they have a specific approach in educating students who have special circumstances of family and morality. The religious organizations' schools (like private schools) have the right to do things that are difficult to do in public schools such as choosing teachers, do not necessarily educate children according to rigid rules, do not discipline students, especially do not have disciplinary expulsion from the school.

Political institutions (in relation to religion) of many countries in Europe and in Asia are *secular state* and *civic religion*, it means that

there is no religion founded by the state, no church built by the state, religion is the work of civil society, all citizens are free to create and choose a religion. However, it does not mean the absence of a religious dimension in political life, the political sphere without the religious dimension. Christianity in England and the United States of America often has a campaign to sponsor political parties to make socio-economic statements and policies. Religious organizations in those countries have the right to strongly oppose the policies such as abortion rights, same-sex marriage law, cloning; to advocate human rights protection, demand recognition of civil society groups independent of the State and government. Some religious organizations have “lobbied” governments to ban the use of mines. The *Arab Spring* movements (2011) with riots, demonstrations against the regimes of Arab world such as Tunisia, Algeria, Egypt, Yemen, Jordan, Arab Saudi, Oman, Sudan, Syria, Iraq, Libya, Morocco, etc. were led by spreading message through Facebook and Twitter of religious activists.

Socio-political associations as a religious juridical person have been operating effectively in many countries, for example, the Christian Union (a national union in Germany) consists of 280,000 members and affiliates with the *European Union* and *Free Trade Union*.

Before the World War II, many hospitals of religious organization were established. In 1937, there were 254 hospitals of religious organizations in China. After 1945, most of these hospitals were partially renovated or transferred to the Government.

Social and charitable funds of religious organizations which have a religious juridical person are effectively operating in many countries such as: Christian Fund for children and elderly people; Community Medical Management Board (CMMB); Lenten campaign Fund of Netherlands; The charitable missionaries; The missionaries of the poor, International Assistance Fund of Scottish Catholicism; Society of St. Vincent de Paul of Pakistan, etc.

The government of United States considers religion as an important resource of the nation for solving social problems. The government

and personal sponsors support the “faith-based” social activities of religion. The most practical action of the Government to promote church-based social services is tax exemption, using taxes to support religious organizations. *The Supreme Court of the United States* has approved permission to expand educational and social services related to religion<sup>2</sup>.

The Supreme Court of the United States also dealt with a lawsuit of a group of rabbis who sued the federal government for funding religious organizations in the project related to *pre-marital sex of minors*. It is an act that violated and challenged the Constitution because *the First Amendment to the Constitution* prohibits the government from subsidizing religious groups. They asked the Court to explain the organizations funded by the Government should provide certain types of services related to counseling and education about the premarital sex of minors; family planning services or abortion. These services were not related to the participation of religious organizations. The lawsuit called *Bowen v. Kendrick* (in March 1988)<sup>3</sup> mentioned above was judged by the Supreme Court (in June 1988) that the federal grants for religious organizations in the services related to sexual activity of minors before marriage do not violate the Constitution. The Court indicated the principles for Congress to pass the law that allow religious organizations to receive government or states funding for the purpose of “legal secular” when they meet the following criteria:

- (1) Organizations received grants are not limited to any religious organization;
- (2) The services provided to the society and the people must not be religious;
- (3) There is no risk of using aid money to spread religion;
- (4) Religious organizations are not the only beneficiaries;
- (5) All manifestations or influences on the promotion of religion must be “random and distant”.



*The Union State Agency for International Development* (USAID) of the United States issued a rule (on October 20, 2004, amended on June 29, 2016) on equality in social work participation of religious organizations (in the USAID's funded programs). The rule of USAID is an order to protect equal rights for religious organizations to participate in social work, to prevent discrimination against all eligible organizations (including both faith-based organizations and other community organizations) in competing for federal financial support to implement social service programs and beneficiaries from them. It ensures that religious organizations and community organizations can compete fairly in receiving the USAID's funding, regardless of the religious characteristics of the applicant. Moreover, although faith-based organizations are not allowed to directly use USAID's funding for religious activities such as worship, pray, propagation or conversion, they can continue to participate in religious activities as long as they are separated time or space from programs or services directly funded by USAID, and participation must be voluntary for those who benefit from the programs or services funded by USAID.

In general, the law of many countries in the world seems to have a reasonable understanding that a secular purpose may exist in a religious context and vice versa, a religious purpose may exist in a secular context. A religious juridical person or a commercial juridical person have equal rights, opportunities and obligations to participate in social, professional and other activities when it has met the conditions prescribed by law.

#### **4. Some issues of social activities of a religious juridical person in Vietnam.**

In Vietnam, a religious organization, since it was established, allowed to establish, registered its religious practices and registered its activities, has not yet been recognized as a religious juridical person by the state. The juridical person of a religious organization is only available when that religious organization has operated stably consecutively for at least five years or more (since the certification of its registration of religious activities)<sup>4</sup>.

According to Article 86, *the Civil Code* in 2015, civil legal capacity of a juridical person is not restricted. According to Article 7 and Article 18, *the Enterprise Law* in 2017 regulates that juridical persons have the right to freedom of doing business in trades that are not prohibited by law, only organizations and individuals: state agencies, people's armed units, cadres, functionaries, officials, commissioned officers, non-commissioned officers, professional militaries, workers and employees of the agencies and units of the People's Army; Professional commissioned officers and non-commissioned officers in agencies and units of the Vietnam People's Police do not have the right to establish and manage enterprises in Vietnam. Two laws mentioned above do not indicate religious organizations. Thus, the right of a religious juridical person to participate in social activities (such as health care or education) will be limited by education and health laws.

Currently, in Vietnam, religious organizations with juridical person cannot represent their juridical person to establish professional, economic organizations (production of material, wealth for society), financial and infrastructural investment (although profits are only used for reinvestment or for the community). Thus, religious juridical persons are not equal in civil rights and obligations like other legal persons. They are not free, fairly compete in participating in social activities and public services (when they have full capacities and conditions) prescribed by law.

In Vietnam, religious juridical persons do not have opportunities or equal access to preferential capital sources of the Government or international organizations in implementing social services and activities.

Besides, other juridical persons have not yet approached and are willing to cooperate with religious juridical persons in implementing infrastructural construction projects such as bridges, ports, roads, supply of electricity, water, telecommunications and public services such as health care and education, etc.,..

The religious juridical persons (religious organizations have been recognized as legal status) do not have a strong "shifting" strategy

from *spiritual salvation to aid*. Therefore, their capacity, conditions, professionalism and organization are not sufficient to prove to society and the state that they will do better than the other juridical persons in social work and public services such as some religious organizations in the world have been doing.

All the above-mentioned limitations should be removed, from the awareness/reasoning to policies and laws in order to have equal opportunities for religious organizations (that have received legal person) as other juridical persons. Perhaps, we also need to have a reasonable awareness that “a small State, a great society”, the state apparatus is streamlined but strong and effective administration, the rest is a space for people and social organizations to develop their full potential. The government just needs to “sharpen” its macro management tool to assessment, evaluation the effectiveness of legal persons in social activities to have policies to develop, to promote all social resources, including resources of religious organizations. /.

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#### NOTES:

- 1 Article 30, Law on Belief and Religion No. 02/2016/QH14 (Điều 30, *Luật Tín ngưỡng, tôn giáo số 02/2016/QH14*).
- 2 <http://prospect.org/article/can-churches-save-cities>.
- 3 <https://en.wikipedia.org/wiki/Bowen-v.-Kendrick>
- 4 Article 21, *Law on Belief and Religion*, requirements for accreditation of religious organizations: 1.It has operated stably and continuously for at least 05 years; 2. It has a charter; 3. The representative(s) or head of the organization holds Vietnamese citizenship, resides permanently in Vietnam, possess full capacity for civil acts. 4. Its organizational structure adheres to its charter; 5. It has assets independent from other organizations and individuals, and it assumes liabilities with its own assets; 6. It engages in legal relations independently.

#### REFERENCES

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3. The Enterprise Law (*Luật Doanh nghiệp số 68/2014/QH13*)
4. <http://prospect.org/article/can-churches-save-cities>.
5. <https://en.wikipedia.org/wiki/Bowen-v.-Kendrick>