MINISTRY OF EDUCATION & TRAINING **MINISTRY OF JUSTICE**

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TRẦN NGỌC HIỆP

STANDARD FORM CONTRACT IN ACCORDANCE WITH PROVISIONS OF VIETNAM CIVIL LAW

Major: Civil Law and Procedural Civil Law

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SUMMARY OF DOCTORAL DISSERTATION

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INTRODUCTION

1. The necessity of dissertation research

The right to enter into and perform a contract is generally one of the important rights of the subjects, recognized and guaranteed by law. The exercise of this power is one of the most important ways for a subject to establish a relationship with another subject, in order to meet the essential needs to improve as well as ensure production and business activities. However, the process of entering into a contract is often a complicated process, and in many cases, in order to reach an agreement of will in order to sign a contract, the parties have to pay a lot of unnecessary costs. This not only affects the contracting process of the parties, but in many cases also affects the production and business activities of the subjects. From the inadequacies of the practice of entering into and performing contracts, it is necessary to have an appropriate method of entering into contracts applied in a number of specific fields, both to ensure convenience for the establishing and to ensure compliance with the principles set forth by the law. In response to this requirement, legislators have developed regulations on standard form contracts.

Allowing the subject parties to enter into and perform a standard form contract not only helps the parties to reduce unnecessary costs in the process of entering into a contract, but also ensures consistency in the establishment and execution of the contract between one and other different entities. More broadly, it helps the production and business process go smoothly, contributing to increasing labor productivity and socio-economic development of the country. In fact, it is undeniable of the value that the establishment and performance of a standard form contract brings to the parties, as well as to the economy. However, through practical research on law implementation, it also shows that the process of publicizing, entering into and performing standard form contracts in fact still reveals many inadequacies, affecting the legitimate rights and interests of contracting parties.

Until now, there have been many scientific studies with different angles related to standard form contracts. However, these works have only approached from a narrow perspective on standard form contracts without any comprehensive study of the legal provisions and applicable practices. This shows that continuing to study the current state of law, practice of law implementation comprehensively in order to provide solutions to perfect the law and improve the effectiveness of the implementation of the law on contracts in accordance with the law is an urgent requirement. From the above arguments, it can be seen that the study of the topic *"Standard form contract in accordance with Vietnamese civil law regulations"* is necessary and will bring profound theoretical and practical values.

2. Dissertation research situation

In general, the standard form contract is a specific type of contract and therefore receives a lot of attention from the authors through many different scientific works in the form of theses, theses, monographs. , magazine articles, etc. Although these works have a direct approach, they have only studied small aspects of standard form contracts, so none of these works have provided comprehensive solutions to perfect the legal framework and improve the effectiveness of the implementation of the law on standard form contracts. This is one of the reasons that the research on the thesis topic chosen by the PhD student is really necessary in the current period.

3. Dissertation research purpose and task

3.1. Research purpose

The purpose of the dissertation is to study and clarify issues related to the theoretical basis of the standard form contract such as the concept, essential characteristics and legislative views on the standard form contract in the world. The research topic also focuses on analyzing and evaluating the current state of Vietnamese law and the practice of applying the law on standard form contracts. Thereby making recommendations to improve the law and solutions to improve the effectiveness of the application of the law on standard form contracts

3.2. Research task

To achieve the above purpose, the dissertation aims to solve the following research tasks:

Firstly, analyzing fundamental theoretical issues on standard form contracts;

Secondly, studying the legal status of standard form contracts and practice of implementing the law on standard form contracts in Vietnam;

Thirdly, assessing the legal status and practice of implementing the law on standard form contracts in Vietnam;

Fourthly, building a system of recommendations to improve the law and improve the effectiveness of the implementation of the law on standard form contracts in Vietnam.

4. Research object and scale of the dissertation

4.1. Research object

Based on the above objectives and tasks, the research object of the dissertation is the theoretical, legal and practical issues of implementing the law on standard form contracts.

4.2. Research scale

- *Regarding the research content:* The dissertation focuses on studying the issues of standard form contracts according to the provisions of the Civil Code 2015 and relevant legal documents;

- *Regarding the space:* The dissertation focuses on researching the law and practice of implementing the law on standard form contracts in the territory of Vietnam. During the research process, the dissertation also relates the laws of some countries from the perspective of comparison with Vietnamese laws to have a basis in perfecting the law;

- *Regarding the time:* The dissertation focuses on studying the current Vietnamese law on standard form contracts.

5. Methodology and research methods

5.1. Methodology

The analysis of the contents of the dissertation is based on the methodological foundation of dialectical materialism and historical materialism. The thesis uses the theory of Marxism - Leninism, Ho Chi Minh's thought and the point of view of the Communist Party of Vietnam as a methodology in the research process.

5.2. Research methods

On the basis of the theoretical foundation of Marxism - Leninism and Ho Chi Minh thought, the dissertation research is carried out according to the following research methods:

Analytical method: This is the method used to analyze, comment and evaluate the views of the authors related to the contents of the dissertation and the provisions of law related to contracts. Form. This is the basic method, used throughout the thesis research process, from an overview of the research situation to the study of in-depth topics and chapters of the thesis.

Synthetic method: This is an important method, used to systematically study published documents and research works related to the dissertation topic. Through the use of this method, the researcher has an overview of the current state of research related to the dissertation topic. Thereby, it is possible to identify and evaluate the research results of the authors and make new recommendations and solutions to the research problem.

Comparative jurisprudence method: This method is used when analyzing and evaluating the provisions of Vietnamese law on standard form in relation to the laws of some countries in order to clarify the common points and differences in the current provisions of Vietnamese law on standard form contracts.

The method of analyzing the logic of legal norms: This method is used when assessing the legal situation, considering the consistency and uniformity in order to detect contradictions in the content of legal provisions on standard form contracts, thereby proposing a solution.

6. New contributions of the dissertation

First, the dissertation is a comprehensive research on theoretical, legal and practical issues of applying the law on standard form contracts.

Second, the dissertation researches and analyzes to determine the nature of the standard form contract.

Third, the dissertation studies the system of legislative views in the world on standard form contracts, thereby determining the main theory for studying the contents of the dissertation.

Fourth, the dissertation gives a systematic assessment of the inadequacies and limitations of the legal regulations on standard form contracts on the basis of a comprehensive study of the legal provisions on standard form contracts.

Fifth, the dissertation comprehensively studies the practice of implementing the law on standard form contracts, from drafting, registering, implementing and resolving disputes about standard form contracts.

Sixth, the dissertation builds a comprehensive system of solutions to perfect the law and improve the efficiency of applying the law on standard form contracts.

7. Dissertation structure

In addition to the introduction, overview of the research, conclusion and list of references, the dissertation content is designed into 3 chapters as follows:

Chapter 1. Theoretical foundations of standard form contracts

Chapter 2. Current status of Vietnamese law on standard form contracts

Chapter 3. Practical implementation of the law on standard form contracts in Vietnam and some recommendations for improvement.

CHAPTER 1
THEORETICAL FOUNDATION ON STANDARD FORM CONTRACT

1.1. History of standard form contract

Through studying the history of the establishment of the standard form contract institution, it can be seen that this institution is objectively recognized as an inevitable consequence of the explosive development of the monopoly manufacturing and service industries when the game is controlled by only a few large companies in those fields, while the number of users of goods and services is extremely large, leading to disparities in the position amongst parties and from that, the ability to impose the will and set forth the contents of the standard form contract also belongs to the party with a higher position, leading to the application of this regulation in the current era.

1.2. Definition, nature and features of standard form contract

1.2.1. Definition of standard form contract

"A standard form contract is a contract that is used repeatedly, in which the terms are set forth by one dominant party in the negotiation (usually the supplier of goods or services) to enter into with the other party. (usually the consumer); the offeree can only accept the entire contents of the contract or refuse to enter into the contract".

1.2.2. Nature of standard form contract

The nature of a standard form contract is shown through the act of entering into a contract or a standard form contract is a contract entered into through a special method.

1.2.3. Features of standard form contract

In addition to the general features of a civil contract, a standard form contract also has the following distinctive features:

First, a standard form contract clearly shows the initiative of one party when they are the one offering the contract while the other party can only accept the entire content of the proposed contract or refuse to deliver the contract.

Second, the standard form contract has unequal bargaining positions among the parties.

Third, the standard form contract is applied many times with the same content.

Fourth, standard form contracts are entered into between two parties, which are ussually businesses providing goods and services and consumers.

Fifth, a standard form contract can only be entered into in writing.

1.3. Legal doctrines related to standard form contract

After researching and evaluating, I would like to propose the following legal theories related to standard form contracts:

First, the Doctrine of unconscionability.

Second, the Doctrine of procedural justice in freedom of contract.

Third, the Doctrine of substantive justice in freedom of contract.

Fourth, the Doctrine of Contra-Proferentem.

Researching these theories I found that although not directly referring to standard form contracts, the theoretical foundations in these theories still have directional value for the improvement of the law. However, it is very difficult to choose one of these theories as the main theory for the dissertation research process. Therefore, in the process of researching the contents of the dissertation, I will use the synthesis of theoretical foundations in these theories appropriately.

1.4. Comparing the term standard form contract with several other terms

1.4.1. Standard form contract and contract template

Firstly, about the subject of contract drafting: It can be seen that the contract template is a term that refers to the documents that are usually drafted by third parties, these documents are usually of a guiding nature and do not contain any information. Whereas a standard form contract is usually prepared by one party of the contract, if the other party wants to enter into a contract, it is required to accept the content of the contract.

Secondly, about the expression of the will of the subjects: The contract template completely guarantees the basic principles in the normal contract conclusion process. Meanwhile, a standard form contract is a special type of contract when one party offers a contract, the other party is not entitled to negotiate the contents in it, but can only accept the entire content of the contract or not deliver the contract.

Thirdly, in terms of content, from my point of view, contract templates can exist in many different forms. Meanwhile, the content of the standard form contract includes detailed and comprehensive terms, applicable to each type of object with each specific type of subject.

1.4.2. Standard form contracts and general trading conditions

In essence, a standard form contract is a complete contract, all content as well as terms in the standard form contract will be recorded in the contract signed by the parties. General trading conditions can exist in many different forms, maybe in a separate document or in a contract entered into between the parties.

Regarding the effective time, the standard form contract is a specific type of contract, so it will have to comply with the general effective time of the contract. As for the general trading conditions, the effective time is when the party providing the general trading conditions has made a notice, publicly listed for the other party to know or must know about these conditions.

Regarding the content change, it is impossible to change the content in the contract after signing the contract. As for the general trading conditions, when the offeror wants to change the contents, he only needs to change those contents himself, and after announcing and publicly posting the new conditions, it is considered valid.

In terms of form, standard form contracts are mainly in written form. The form with general trading conditions can be through a written contract but also through a certain act such as posting general trading conditions on the website, on social networks or other means of mass communication.

1.4.3. Standard form contract and adhesion contract

The only difference between the standard form contract and the adhesion contract that we can see is the use of the term as well as the way to emphasize the dominant element in it, especially if the standard form contract emphasizes on the "sample" nature, the standardized and imposed nature of the party offering to enter into the contract when this party prepares the contract content to send to the other party. Thus, when giving the term standard form contract, usually the person giving the term will look at it from the perspective of contract conclusion activities. Meanwhile, the adhesion contract focuses on the element that is established with many consumers, in other words, shows the popularity of this type of contract.

1.4.4. Standard form contract and standard clause of contract

The main difference between a standard clause and a standard form contract is the extent to which it applies. In a standard form contract, all contract contents are standardized contents, given by the other party and the other party is not negotiated and agreed upon. As for the standard terms of the contract, it can be seen that these terms will not constitute the entire content of the contract but only a part of the contract.

1.4.5. General evaluation of terms

The term contract template is a term that has a completely different connotation from the rest when it is only a form of document proposed by one party to the other party, but this proposal is for reference only rather than impose, the offeree can completely adjust the content and the parties continue the process of exchange and negotiation towards the conclusion of the contract. Meanwhile, the other four terms including standard form contract, general trading conditions, adhesion contract and standard contract clause have the same nature and all refer to the same problem, that is the imposition of the party making the proposal about the contents that this party has prepared and the other party does not have the opportunity to negotiate on the change of these contents. Therefore, we can basically apply the same legal mechanism to these four terms.

1.5. Laws of several countries and regions around the world on standard form contracts

1.5.1. Overview of the laws of several countries and regions around the world

1.5.1.1. Law of the European Union

Regarding the content of standard form contracts, the Council of the European Union issued Directive 93/13/EEC on 5 March 1993 on unfair provisions in consumer contracts. This directive is seen as the basis for exercising extensive control over standard terms.

1.5.1.2. Law of Germany

Germany is one of the few countries in the world to enact its own statutes on standard form clauses when on April 1, 1977, the Standard Clause Act came into force. This act soon played an important role in German Contract Law. From 1977 to 1999, Germany's Supreme Court alone, not including the lower courts, handled more than 1500 cases related to the Standard Clause Act. This act remained as a separate law until it was incorporated into the German Civil Code on January 1, 2002. During the 25-year life cycle, although there have been some modifications to certain details, there have been almost no major adjustment or amendment and this is considered a successful act when it ensures good harmony with the Directive of the European Union.

1.5.1.3. Law of China

For Chinese law, the issue of standard form contracts is recognized in the Civil Code 2020 effective from January 1, 2021. Prior to the introduction of the Civil Code 2020, China's standard form contract was governed by the 1999 Contract Law mainly from the perspective of unfair standard clauses. However, the introduction of the Civil Code 2020 also leads to a comprehensive systematization of provisions on standard form clauses, specifically from Articles 496 to 498.

1.5.1.4. Law of Japan

The Japanese Consumer Contracts Act 2000 consists of 53 articles, of which the provisions related to the provisions of the consumer contract provisions are in Section 3 of Chapter 2, from Articles 8 to 10. Article 8 sets forth provisions will be void as it excludes the business from liability for damages incurred, Article 9 sets forth invalid provisions for specifying the amount of damages to be compensated by the consumer.

1.5.1.5. Law of the United States

The principles used by the United States to handle standard form clauses are based on Section 2-302 of the United States Uniform Commercial Code (UCC) by a leading scholar of commercial law and at the same time also the chief architect of UCC – Llewellyn. Specifically, UCC Sections 2 – 302 allows, but

not requires, the Court to deny the validity of a provision deemed unconscionable. Section 2 – 302 are not limited to the control of standard terms, but apply to all terms in transactions between merchants and consumers, including agreed upon terms between parties. In practice, however, most cases involving Sections 2-302 are related to standard clauses.

1.5.2. General comments on the legal system of several countries and regions in the world

In general, the system of legal regulations on standard form contracts of some countries in the world that I analyzed is quite diverse and shows many different approaches. Some countries have a general approach from the Civil Code, but there are also countries with a consumer perspective with a focus on consumer protection law. Both of these perspectives have certain advantages and disadvantages and are aimed at specific goals in accordance with the legal system of each country.

CHAPTER 2
LAW REGULATIONS ON STANDARD FORM CONTRACT

2.1. Entering into and performing the standard form contract

2.1.1. Entering into the standard form contract

2.1.1.1. Subjects entering into standard form contract

First, for the party that proposes to enter into a standard form contract

The party proposing to enter into a standard form contract can be an individual or a legal entity, as long as it ensures the element of the subject's capacity to provide goods and services professionally to customers. In addition, although the offeror to enter into a standard form contract can be an individual or an organization, practice shows that most, even almost 100% of these entities are organizations. This is explained by the fact that organizations with a methodical structure, a large number of employees, and a coordinated process between many parties can create professionalism, thereby providing services. services are available to many customers to use goods and services.

An outstanding point of the offeror to enter into a standard form contract is the superiority of the bargaining position compared to the other party. This superiority comes from a number of reasons as follows: First, the offeror has an advantage in terms of information when entering into a contract. Second, there is an imbalance between supply and demand in transactions related to goods and services using standard form contracts.

Second, for the party offered to enter into a standard form contract

The party offered to enter into a standard form contract is mostly a consumer when the number of consumer contracts for goods and services is extremely large. However, in addition to consumers, standard form contracts can also be applied between business entities, although not many. These entities, when entering into a standard form contract, still have to ensure the general conditions prescribed by the civil law regarding the subject's capacity in general, including the capacity for civil acts, depending on the age and cognitive ability to control the civil act and capacity, that is, whether they have the right to enter into that contract or not. Depending on the specific transaction area, where specialized laws have more specific provisions on the subject capacity of the party proposed to enter into a standard form contract, these subjects will also have to comply with the specific provisions of that particular law.

2.1.1.2. Principles for entering into standard form contract

The Civil Code 2015 does not have a separate provision on the principle of entering into a contract, but the conclusion of a standard form contract in particular and the conclusion of a contract in general will have to comply with the basic

principles of civil law. However, a standard form contract is a type of contract entered into in a special way with its own characteristics, and among the above basic principles, there are two limited principles when entering into a standard form contract, which is the principle of equality and the principle of liberty.

This will certainly affect the interests of the offeree and therefore, the task of the legal provisions on standard form contracts is to find a way to restore these two principles in order to ensure the balance between the two subjects. Currently, these regulations are developed in the direction of having a higher level of intervention by competent state agencies compared to normal contracts, the purpose is not to let the party offering the contract, which is the strong party, causing certain disadvantages in terms of rights and interests for the other party, which is the weak party. In particular, the legal provisions on standard form contracts are adjusted to control issues including:

First, the form of the contract. Accordingly, both Article 14 of the Law on Protection of Consumers'rights 2010 and Article 7 of Decree 99/2011/ND-CP dated October 27, 2011 detailing and guiding the implementation of a number of articles of the Law on Protection of Consumers'rights, specifically record the form, language, style, font size, ink color as well as the background of the contract. Thus, this contributes to limiting the cases where the party offering the standard form contract takes advantage of his/her full right to draft and uses inappropriate forms, complicated language, small font size, etc difficult to see to reduce the ability to read and understand the contents of the contract of the party offered to enter into the contract.

Second, the content of the contract. Regulations related to control of contract content are also quite diverse, but focus on regulations on what must be included in the contract as well as what is prohibited in the contract. In particular, the mandatory content in the contract is usually aimed at providing full information on the most basic and important issues in the contract, while the prohibited content is to avoid the case that the party giving the contract drafts a contract that is inappropriate and infringes on the interests of the other party.

2.1.1.3. Order of entering into a standard form contract

The process of entering into a contract in general and a standard form contract in particular always must include two stages, that is, an offer to enter into a contract and an acceptance of the offer to enter into a contract. These two phases will be analyzed and evaluated in detail in the following content.

First, making proposal to enter into a standard form contract

As for the proposal to enter into a standard form contract, a special point can be seen that the content of the offer to enter into is the content of an almost complete contract with all the terms, not just the minimum content expressing the

intention to enter into a contract like ordinary offers to enter into a contract. The contract terms have been drafted by the offeror, and the offeree cannot change or supplement, except for specifying some terms related to the personal information of the offeree. Therefore, the content of the proposal to enter into a standard form contract always ensures clarity and full details, but has the disadvantage that it is too long, complicated, uses many technical terms while proposing. Contracting normally only refers to the basic elements of the nature so that the offeree understands the main ideas and the most necessary contents.

The content of the proposal to enter into a standard form contract or the content of a standard form contract shall be made public and notified to the offeree before entering into a contract. This is generally prescribed for contracts in Clause 1, Article 387 of the Civil Code 2015 when "in case one party has information affecting the other party's acceptance to enter into a contract, it must notify the other party" specified in Clause 1, Article 405 of the Civil Code 2015 when “the standard form contract must be made public so that the offeree knows or must know about the contents of the contract” as well as in Clause 6, Article 12 of the Law on Protection of Consumers’rights 2010, which requires organizations and individuals trading in goods and services "accurately and fully notify consumers of the standard form contract and general trading conditions before the transaction".

Second, accepting the proposal to enter into a standard form contract

The process of entering into a contract according to the form ends when the offeree responds to the offeror's offer to enter into a contract. This reply can lead to one of two consequences: Acceptance of the offer to enter into or rejection of the offer to enter into. When the offeree refuses the offer to enter into, the contract is not formed because the will of the parties do not meet and disagree with each other on the contents of the contract. If the offeree accepts the offer to enter into, a contract will be formed. Acceptance of the offer to enter into here is understood that the offeree will have to accept all the contents offered by the offeror without modifying or adding anything. The process of entering into a standard form contract does not change the role, from the beginning to the end, the offeror is always only one party, usually the supplier of goods and services, and the offeree is always the same, usually the consumer. The acceptance of an offer to enter into a contract in a standard form contract is not the final result after many exchanges between the parties, but only takes place after a single party's offering.

2.1.2. Implementation of standard form contract

Regulations on the performance of a standard form contract are recorded in Article 17 of the c, which includes two issues: The supplier of goods and services must spend a reasonable time for consumers to study the contract and must keep the contract according to the signed form until the contract expires.

First of all, it can be seen that it is unreasonable to prescribe an obligation to give consumers reasonable research time in the section on contract performance when it is an obligation that belongs to the contract stage. The concluding stage includes all the acts that take place before the contract is formed and comes into force, while the performance stage takes place after the contract has come into force. The consumer's obligation to study the contract itself is carried out before entering into it, for the purpose of reviewing and having a basis from which to make a decision whether to accept the conclusion of the contract or not. Therefore, giving consumers reasonable time to research contracts does not belong to contract performance but to contract conclusion. On the other hand, the act of forcing the party giving the contract to keep the signed contract until the contract expires and having the responsibility to provide a copy when the consumer keeps it secret or loses it is reasonable. The party offering the standard form contract must strictly comply with the contents specified in the contract and if there is a dispute, the contract document will be the basis for resolving the dispute amongst parties.

2.2. Control of standard form contract

2.2.1. Standard form contract control method

2.2.1.1. Pre-supervision method

The pre-supervision method in the control of standard form contracts is understood as the control of such standard form contracts before applying the contract to the remaining subjects. Currently, the pre-supervision method is expressed through the form of contract registration.

The activity of registration of contracts according to the form was first introduced in the Prime Minister's Decision No. 02/2012/QD-TTg on promulgating the List of 09 essential goods and services subject to registration of standard form contract, general trading conditions. After many revisions through Decision No. 35/2015/QD-TTg, Decision No. 38/2018/QD-TTg and finally Decision No. 25/2019/QD-TTg, up to this point, the List Standard form-based contracts must be registered, fields in which registration of standard form contracts is mandatory include: *supply of domestic electricity; supply of domestic water; Pay TV; landline telephone service; terrestrial mobile communication services (prepaid and postpaid); internet access services; transporting passengers by air; railway passenger transport; buying and selling apartments, living services provided by the apartment management unit.*

However, it can be seen that the list of essential goods and services subject to contract registration according to the current law provisions in Decision 02/2012/QD-TTg is not being applied according to any criteria. However, there is still a lack of goods and services that are really essential for life, while many other

goods and services on the list seem to be geared towards higher-quality services. improve the quality of people's lives or their prevalence, rather than being absolutely necessary and indispensable for people.

Regarding the controlling authority, the method of pre-supervision is carried out by competent state agencies, specifically according to Article 9 of Decree 99/2011/ND-CP including the Ministry of Industry and Trade (Department of Industry and Trade) competition management and consumer protection) and the Department of Industry and Trade, in which the Ministry of Industry and Trade is responsible for standard form contracts, general trading conditions applicable to standard form contracts with the scope of application on nationwide or from two or more provinces. The Department of Industry and Trade is responsible for standard form contracts and general trading conditions that are applicable in provinces and centrally run cities.

2.2.1.2. Post-supervision method

Post-supervision method is a method used to assess the actual situation of implementing legal provisions of the subjects, if in case of detecting violations, the competent authority can issue legal solutions. sanctions and consequential handling measures to act as a deterrent and warning to violators, in other words, post-supervision means "cure". This method simply recognizes standard form contracts, which are civil contracts, and leaves the parties free to enter into, enter into force, perform and terminate contracts. However, giving the parties freedom in a standard form contract does not mean leaving the parties to do whatever they want, but only when the parties have concluded the contract, then the control activity will take place. .

Regarding the subject of application, the method of post-supervision is not limited to the object, when all fields of application of the standard form contract, whether registration is compulsory or not, may be subject to post-supervision. This is reflected in Clause 3, Article 14 of Decree 99/2011/ND-CP when registration-receiving agencies still have to regularly check and monitor the circulation of contracts according to the registered form. However, the control method for standard form contracts in the list of compulsory registration or non-registration still has certain differences.

Regarding the controlling authority, the post-supervision method is more diverse when in addition to the competent state agencies such as the Ministry of Industry and Trade and the Department of Industry and Trade, both consumers and social organizations participate in consumer protection also have the right to participate in the control process.

2.2.2. Scope of standard form contract control

2.2.2.1. Control of the form of standard form contract

The recognition of a standard form contract according to a written form is an appropriate regulation when the written form helps to ensure legal safety, is the basis for recording the contents agreed by the parties, and is also a basis for dispute settlement when the parties have conflicts with each other. What wants to be applied on a large scale on a large scale, it needs to have consistency in all cases, so only the written form can satisfy these factors, and the other two forms including oral and behavioral will be applied differently depending on each case, each specific situation.

In addition, the elements of the minimum font size of 12, the background of the paper and the ink color in the standard form contract must be reasonably contrasted, in order to ensure suitable conditions for the observant's observations, from which they can easily read the contract and review its contents. Furthermore, related to the language of the contract, if the Law on Protection of Consumers'rights 2010 has a relatively open provision when allowing the consumer contracts to be in Vietnamese or another language if the parties have an agreement or the law provides for them. Decree 99/2011/ND-CP has a rigid regulation that requires the contract language according to the form to be in Vietnamese without exception. This regulation is unreasonable when more and more foreigners live and work in Vietnam. These people themselves also play the role of users of services and goods, so they are also the subjects entering into standard form contracts. Thus, if the standard form contract language is in Vietnamese, it will hinder and make it difficult for these subjects to enter into contracts.

Regarding the content of the language, both the Law on Protection of Consumers'rights 2010 and Decree 99/2011/ND-CP stipulate that the language must be clear and easy to understand, that is, when reading the language in the contract, anyone can understand and capture it. However, these are quite general and vague regulations, and depending on the specific circumstances, it can be assessed whether the use of such language is clear and understandable. Therefore, this provision is further supported by the content of contract interpretation in Clause 2, Article 405 of the Civil Code, according to which *"in case a standard form contract has unclear terms, the party offering the standard form contract must bear disadvantage when interpreting that clause"* and stipulates in Article 15 of Law on Protection of Consumers'rights 2010: *"In case of divergent understanding of the contract contents, the organization or individual competent to settle the dispute shall interpret in favor of the consumers".*

2.2.2.2. Control of the content of standard form contract

Content control is at the heart of most regulations regarding standard form contract control. This is also the content that the legal systems as well as the

scholars around the world focus on researching the most because this is an extremely complex issue, many aspects can arise in the process to review and evaluate the content of the contract to see if the contract creates fairness for the subjects or not. In general, the Vietnamese legal system controls the content of a standard form contract from two angles, that is, it stipulates what must be included in the contract and what is prohibited in the contract.

Currently, the provisions on the contents that must be included in a standard form contract are provided in relatively detailed regulations in a number of specialized legal documents related to specific types of contracts such as Clause 1, Article 13 of the Law on Insurance business 2000 (amended in 2010) stipulates the contents that must be included in an insurance contract or Appendix 1 of Circular 39/2016/TT-BTTT of the Ministry of Information and Communications on standard form contracts and general trading conditions in the field of telecommunications require a standard form contract for the provision and use of telecommunications services that must contain at minimum certain contents.

In general, it is extremely necessary to control certain contents that must be included in some contracts in general and standard form contracts in particular. At first glance, it seems that this control becomes superfluous, interfering with the free will of the subjects, but analyzing closely, we will see that the ultimate purpose of these regulations is to ensure the correct and complete performance of the obligation to provide information of the party giving the contract as well as for the protection of the interests of the other party. Specialized contracts with the above provisions are mostly also contracts that regularly apply standard form contracts, so the obligation to provide information becomes even more important due to asymmetry of capabilities. access to information between subjects. It is therefore perfectly reasonable to ask for the required information contained in these types of contracts, and although as a means of controlling content, they are actually even significant regarding procedurally contracting.

Besides the method of controlling by noting the issues that must be included in the content of the contract, another method of content control is also applied that is to prescribe the types of prohibited clauses in the contract. In which the provisions of the Civil Code 2015 provide an overview, including three general types of terms that are not used in the standard form contract, and the Law on Protection of Consumers'rights 2010 lists a detailed list of specific provisions prohibited from application in contracts with consumers.

In general, based on the experience and lessons of developed countries related to standard form contracts such as the European Union, Germany or South Korea, content control regulation is always a central content and received much attention

from legislators and scholars alike. Although the standard forms of the countries are not exactly the same, there are some similarities, which is a combination of both general and specific provisions on unfair provisions. In particular, the general regulations provide the concept as well as signs to identify unfair terms, while the specific regulations will list in detail the unfair terms in practice. This creates a multi-layered content control system that weaves between general and specific rules, where the individual rules help us immediately know which terms in the contract will not be in force.

2.3. Handling of violations of the law on standard form contracts

In general, violations of the law on standard form contracts are relatively special acts when they are not only stipulated in civil law documents but also constitute administrative violations when they are authorized by law. Regulations from Article 47 to Article 52 of Decree 98/2020/ND-CP of the Government stipulating penalties for administrative violations in commercial activities, production and trading of counterfeit and banned goods and protection of interests consumers. Violations of standard form contracts can be recognized as acts that are dangerous to society and disrupt the social order established by the State, and that is the reason why these acts are regulated in documents on penalties for administrative violations.

2.3.1. Handling of violations of the law on procedures for entering into and performing standard form contracts

We can see a number of issues that violations, although they are similar regarding entering into a standard form contract, but are regulated quite messy and scattered in many different laws, not concentrated in one united law document. Moreover, the nature of the first three acts actually have the same content related to the offeror's failure to perform the obligation to provide information, except for the last act of providing, disclosure of information improperly. Thus, the fact that all three acts share the same legal nature but are scattered across three different laws, making the regulations elusive and illogical. In addition, these violations are similar in nature but have three different levels of punishment, which is difficult to explain except that those acts are located in 3 different laws. Furthermore, these practices can lead to certain civil legal consequences, depending on whether it is a standard form contract or a general trading condition.

2.3.2. Handling of violations of the law on form of standard form contract

These acts are essentially the same violations in terms of form, they are also applied with the same penalty as well as the same remedial measure that is forced to amend the contract for the violation, However, the fact that these acts are still classified in two different laws is a limitation of the legal provisions in this case. Acts of the same infringing nature and similarity need to be classified in the same law to ensure consistency and reasonableness when formulating regulations.

2.3.3. Handling of violations of the law on content of standard form contract

Standard form contracts that contain invalid terms, i.e. violating the prohibition in Clause 3, Article 405 of the Civil Code 2015 or Clause 1, Article 16 of the Law on Protection of Consumers'rights 2010, will be subject to a fine ranging from 20,000,000 to 30,000,000 VND according to the provisions of Clause 2, Article 52 of Decree 98/2020/ND-CP. In addition, the party offering the contract must also take the remedial measure that is to force the return of the illegal profits obtained from the aforesaid act. That is, in the event that the act of putting such invalid provisions in place helps the party offering the standard form contract obtain material benefits that he or she would not otherwise have had without the inclusion of these provisions, will have to return the above-mentioned material benefits at the request of the competent authority. In addition, civil legal consequences also apply, which is that the contract will be invalidated in terms of content due to violation of the prohibition and this is a form of absolute invalidity, not affected by the statute of limitations required to declare the transaction invalid.

2.3.4. Handling of violations of the law on registration of standard form contract

According to the provisions of Clause 2, Article 49 of Decree No. 98/2020/ND-CP, violations of the standard form contract registration will be subject to a fine of from VND 30,000,000 to VND 50,000,000 and double the above amount if the violation is committed in the scope from 02 provinces or centrally-run cities or more, including the following acts:

- *Failing to register or re-register the standard form contract with the competent authority.*

- *Failing to notify consumers of the change in standard form contracts and general trading conditions as prescribed.*

- *Failing to properly apply the standard form contract, general trading conditions registered with the competent state management agency on consumer protection as prescribed.*

CHAPTER 3
PRACTICAL IMPLEMENTATION OF LAW ON STANDARD FORM CONTRACT IN VIETNAM AND SOME PETITIONS FOR COMPLETION

3.1. Practical implementation of the law on standard form contracts in Vietnam

3.1.1. Practice of standard form contract control activities of state management agencies

3.1.1.1. For standard form contract registration activity

The number of applications received by registration form alone central and local state management agencies has shown a huge difference when the number of the Department is several hundred times higher than the. average number of receptions of each Department. In many cases, businesses in the field of apartment sales, although only operating in one province or city, can completely register at the Department of Industry and Trade, but because the Department has not implemented this procedure, they have to register at the Department of Competition & Consumer Protection. Moreover, there are many cases where these agencies are still in conflict with each other about certain contents in the registration dossier, sometimes the application is rejected by one agency but accepted by the other. This leads to the fact that the approval rate of the application file is different in the opposite direction when the acceptance rate of local agencies is on average 2-3 times higher than the rate of the central agency, but in fact still discovered a lot of provisions that do not comply with the provisions of the law even though the registration dossier has been approved by the Department of Industry and Trade.

3.1.1.2. For inspection activity on standard form contract implementation

In general, according to the practice implemented at both the Department of Competition & Consumer Protection as well as the local Departments of Industry and Trade, the state management of standard form contracts is mainly carried out for enterprises in the group that must be registered of standard form contracts through the receipt of registration dossiers, the remaining control over the group that is not required to register to detect violations has not been really focused.

3.1.2. Practical implementation of the law on standard form contracts of enterprises providing goods and services

The activity of applying the law on standard form contracts are carried out by enterprises providing goods and services in many different fields. In the process of implementation, although each business field will have different ways of drafting and building content to suit the characteristics of each field, the common point of many businesses is that there are still many violations of the law on standard form contracts.

3.1.3. Practice of settling disputes on standard form contracts of the court

It is important to realize that a standard form contract is not a specific type of contract but simply a special mode of contract execution. Therefore, the standard form contract can be any type of contract among the common contracts, such as sales contract, loan contract, service contract, etc., therefore, standard form contract-related disputes are not specific but tend to blend into common contractual disputes.

3.1.4. General assessment of the actual situation of implementing the law on standard form contracts in Vietnam

In general, based on data reflecting the activities of state management agencies in the process of controlling standard form contracts as well as analyzing the current situation of violations of standard form contracts, general trading conditions of some typical enterprises and dispute settlement activities of the Court, we can draw the comment that the level of compliance in standard form contracts and general trading conditions of many enterprises is not high when most contain provisions that infringe on the legitimate interests of customers. Many regulations have vague and unclear content, especially related to the rights and obligations of the parties.

3.2. Some petitions to perfect the law and solutions to improve the efficiency of law enforcement on standard form contracts

3.2.1. Petitions to improve the provisions of the Civil Code 2015 on standard form contracts

3.2.1.1. Completion of the overall structure

In my opinion, two articles 405 and 406 of the Civil Code 2015 can be merged into a single article to facilitate the governance of both standard form contracts and general trading conditions.

At the same time, it is necessary to rearrange the structure of the clause to include four clauses corresponding to four issues: definition, establishment, form and content. These are the most central issues, the most basic and the most different points of the standard form contract compared to other conventional contracts.

3.2.1.2. Completion of the definition of standard form contract

I recommend combining the two terms standard form contract and general trading conditions into a standard clause, and introduces the concept of a standard term as follows:

"1. Standard clauses are terms in a contract or other documents belonging to the content of a contract, made by a dominant party in the negotiation (usually a supplier of goods or services) to enter into a contract. with the other party (usually the consumer); The offeree can only accept the entire content of the terms or refuse to enter into the contract".

NCS kiến nghị kết hợp hai thuật ngữ hợp đồng theo mẫu và điều kiện giao dịch chung thành điều khoản theo mẫu, và đưa ra khái niệm điều khoản theo mẫu như sau:

3.2.1.3. Completion of the establishment of standard form contract

I propose recommendations on entering into standard form contracts in the Civil Code 2015 as follows:

"2. The party providing the standard terms must comply with the following contractual obligations:

a) Publicize on electronic information sites and transaction locations so that the offeree knows or must know about the contents of the contract;

b) Instruct the offeree to understand the important points of the contract in relation to the standard clauses and to use the means to bring them to the attention and recognition of these contents;

c) Allow a reasonable period of time for the offeree to study the contents of the contract".

3.2.1.4. Completion of the form of standard form contract

I recommend the form of a standard form contract in the Civil Code 2015 as follows:

"3. The form of standard clauses must be in writing.

The language of the standard terms can be in Vietnamese or another language but must be clear and easy to understand. Where the standard term is not clear, the party making the terms is at a disadvantage in interpreting the provision.

The font size, color, paper background, background image of the standard terms must ensure convenience for the parties to read and study the content".

3.2.1.5. Completion of the content of standard form contract

I propose to amend the content of the standard form contract in Clause 3, Article 405 of the Civil Code 2015 as follows:

"4. If a contract contains unfair standard clauses, those terms will be void. An unfair standard clause is a provision that is contrary to the basic principles in Article 3 of this Code, creating a serious imbalance in the rights and obligations of the parties in the contract and causing disadvantages. to the proposed party.

The terms agreed upon by the parties in the contract shall prevail in case of conflict with the standard provision".

3.2.2. Petitions to improve the provisions of the Law on Protection of Consumers'rights 2010 and other legal documents on standard form contracts

I recommend that Clause 1, Article 16 of the Law on Protection of Consumers' rights 2010 should adjust the clause at point i to ensure the accuracy of the content as follows: *"Allow organizations and individuals trading in goods and services to transfer rights and obligations to a third party if the transfer is likely to be detrimental to the consumer, unless otherwise agreed by the consumer"*.

Besides the Law on Protection of Consumers' rights 2010, the researcher found that there is one more issue in another document that needs to be adjusted, that is, activities related to the list of essential goods and services that must be registered under a contract according to the Decision No. 02/2012/QD-TTg. I give a point of view to recommend on this issue, that is, to remove the requirement that certain goods and services have to register for standard form contracts and general trading conditions.

3.2.3. Solutions to improve the efficiency of law enforcement on standard form contracts

First, the solution for the party offering the standard form contract. I propose to adjust the fine level and some additional measures of violations of the standard form contract in Decree 98/2020/ND-CP towards an increase. In addition to administrative sanctions, solutions for dealing with the consequences of a breach standard form contract are also extremely important. In particular, contract modification will be the preferred solution in cases where there are violations of the form and content of the standard form contract.

Second, the solution for state management agencies on standard form contracts. In general, my view is that it is necessary to increase the post-supervision activities and gradually reduce the pre-supervision activities. Therefore, the key for state management agencies is to strengthen inspection and supervision activities on the implementation of standard form contracts by enterprises.

GENERAL CONCLUSION

Standard form contracts are one of the most commonly applied types of contracts in socio-economic reality, so how the law regulates standard form contracts will have a great impact to the economy. Through the study of the topic "Standard form contract in accordance with provisions of Vietnamese civil law", I have drawn the following basic conclusions:

Chapter 1, the researcher studied the theoretical basis of the standard form contract. The results of this study include:

First, the definition of a standard form contract is generally approached from many different angles, be it from the perspective of the conclusion of the contract or the aspect of the subject, namely the consumer. However, when considered from the perspective of civil law, the standard form contract is mainly seen from the conclusion of the contract.

Second, the legal characteristics of a standard form contract are reflected in the predominance of one party's bargaining position, the content of the contract is used many times, and the main participants are the businesses that provide goods, services, and consumers. These are the distinguishing features of the standard form contract compared to other civil contracts.

Third, the doctrines of substantive justice and procedural justice are important theories, which form the basis for later standard forming contractual control issues.

Fourth, the standard form contract together with the two terms standard form terms and general trading conditions have similarities with each other, mainly differing in size and form of expression, so they can be replaced by each other in some cases.

In Chapter 2, the researcher studied the legal status of the standard form contract and gave the following results:

First, a standard form contract has its own peculiarities from the perspective of entering into a contract, which is reflected in the elements of the subject of the contract, the principle of the contract and the order in which it is concluded. In particular, related to the order of conclusion, the Vietnamese law is still quite flawed when it does not stipulate a necessary obligation that the party giving the contract needs to do to the other party, that is to explain and instruct important contents of the contract.

Second, regarding the standard form contract control, if viewed from the control method, we have pre-supervision and post-supervision method. In which, the pre-supervision method is mainly expressed through the compulsory registration of standard form contracts in certain fields, while the post-supervision method is

expressed through activities of inspecting the implementation of provisions of the law on standard form contracts. As for the scope of control, I suppose that it includes control of form and control of content. Control of form means giving regulations on language, font size, background, and color while control over content is necessary to introduce the concept of unfair provision, which is the problem Vietnamese law has not yet recognized.

Third, regarding the handling of violations of the law on standard form contracts, regulations on sanctioning administrative violations as well as measures to deal with consequences in civil terms, in general, are still quite messy, not clearly codified and not suitable for each type of violation.

In Chapter 3, I outlined the current implementation of the law and made recommendations for amendments to the law on standard form contracts, specifically:

Firstly, the current system of legal regulations on standard form contracts is still quite contradictory, overlapping and incomplete, especially between the Civil Code 2015 and the Law on Protection of Consumers' rights 2010, while the implementation of these provisions of subjects still have many problems, when businesses provide goods and services, the level of compliance is not high when there are many violations on the form and content of the contract. As for consumers, they do not really care about their rights and they themselves only consider signing a contract as a procedure to use certain goods and services.

Second, regarding the recommendations to improve the law, the researcher proposed to take the Civil Code as the center, that is, to restructure the entire provisions of Articles 405 and 406 of the Civil Code 2015 for the reason that it is necessary to recognize the standard form contract in a more general way, not just from the perspective of consumers. Therefore, a specialized law such as the Law on Protection of Consumers' rights 2010 will only play a supplementary role and concretize the provisions in the Civil Code, not play the leading role.