

## 学位論文及び審査結果の要旨

横浜国立大学

氏名	NGUYEN THI ANH
学位の種類	博士（法学）
学位記番号	国府博甲第20号
学位授与年月日	平成29年9月15日
学位授与の根拠	学位規則（昭和28年4月1日文科省令第9号）第4条第1項及び横浜国立大学学位規則第5条第1項
研究科(学府)・専攻名	国際社会科学府 国際経済法学
学位論文題目	Public participation in Environmental Impact Assessment - An analysis of theory and practice in Vietnam
論文審査委員	主査 横浜国立大学 教授 加藤 峰夫 横浜国立大学 教授 荒木 一郎 横浜国立大学 教授 小池 治 横浜国立大学 教授 椛島 洋美 横浜国立大学 准教授 小林 誉明

## 論文の要旨

Both principles 23 of the World Charter for Nature (1982) and the 10<sup>th</sup> principle of the Rio Declaration on Environment and Development (1992) of United Nations strongly stress that public participation is the cornerstone of sustainable development. That is, “*all persons .... [s]hall have the opportunity to participate ... [i]n the formulation of decisions of direct concern to their environment...*” and “*environmental issues are best handled with the participation of all concerned citizens, at the relevant level...*” Moreover, scholars all agree that public participation plays an important key to achieve the success of Environmental Impact Assessment (hereinafter referred to as EIA) process - a process of evaluating the potential environmental impacts of a proposed project or activities, including both favorable and harmful impacts. To highlight the important role of public participation, Hartley and Wood (2005, p. 319) conclude that “*EIA is not EIA without consultation and participation*”.

To date, most EIA systems in national legislation have legalized public participation as a key element in EIA process to ensure the environmental right and conservation. However, among scholars, there seems to have contestation on the concept and objectives of public participation in EIA process. Additionally, the

literature review revealed that the extent to which the participatory approach differs from developed countries to developing countries. But admittedly, empirical research on implementation of public participation in EIA process is still limited, especially in Vietnam.

Based on the signal background above, the purpose of this search is to delve deeper into the theoretical arguments on public participation in EIA process and the practice of public participation in Japan and Vietnam. Due to limited time and resources, an empirical study was only conducted in Vietnam through EIA analysis and interviews. Both the theory review and the analysis of public participation in Japan's EIA process as well as EIA reports and interviews in Vietnam have centered on the following issues of public participation in EIA process: the meaning, scope, and objectives of public participation and the factors influencing the implementation of public participation in EIA process. Consequently, two research objectives of this dissertation are indicated: (i) the first research objective is to analyze the theoretical issues of public participation in EIA process; and (ii) the second research objective is to scrutinize the factors influencing the implementation of public participation in Vietnamese EIA process in practice. Accordingly, four research questions in order to make the orientation for this study are:

1. *Why have governments provided public participation in EIA system? What theoretical and normative arguments are related to public participation in EIA process? What are the meaning and scoping of public participation?*
2. *What are the laws, views and legal trends on public participation in EIA system at the international level and the national level in some selected countries?*
3. *How is Vietnamese legal system on public participation in EIA as well as their implementation in reality? Which factors influence the implementation of public participation in Vietnamese EIA process?*
4. *What are the suggestions for Vietnamese government concerning the public participation in the EIA system in the future?*

Moreover, the research methodology used in my research is a combination of the legal comparative method, the legal historical method, the desk/historical research and the qualitative method. Particularly, to achieve the first objective and to answer the first two research questions, the legal comparative method, the legal historical method, and the desk/historical research are mainly employed. In order to reach the second objective and to solve the last two questions, the qualitative method is primarily used for data collection. In so doing, seven EIA reports were analyzed and thirty-three face-to-face interviews with different stakeholders in Ho Chi Minh City, Vietnam were conducted. Although some methodological limitations remain, such as the possible bias from interviewees, the qualitative method is the best approach for obtaining the opinions of stakeholders regarding the theory and practice of public participation in Vietnam's EIA process.

Public participation, *ipso facto*, does not bring into play its effectiveness in practice if separating it with transparency, access to information, access to justice and other democratic aspects. Admittedly, public participation should not be described as a panacea for problems of environmental governance, nor can the one best participatory form be established for the EIA process of each country. But equally, public participation is also a multifunctional key for improving environmental governance and consolidating democracy. Recently, some authors point out literally many theoretical reasons and experience from empirical research to believe that the wider public participation is, the more successful EIA achieves.

This dissertation is greatly influenced by the public participation approaches of O'Faircheallaigh (2010), Glucker (2013), Arnstein (1969) and Stern and Dietz (2008) through which public participation in EIA process is clearly discussed about some main issues: definition, purposes, and models of public participation. There seems to not deny the truth that public participation plays a key role in the success of EIA process and the smooth implementation of the specific project. The theory review of public participation in EIA process has centralized the concepts of "*participation*", "*the public*" and "*public*

*participation*”, models and objectives of public participation, and factors influencing the implementation of public participation in EIA process. Although public participation has already implemented in the legislative process and administrative process for a long time, scholars still argue about all issues regarding this procedure, such as meaning, scope, forms of participation and its objectives. However, from different standpoints and various approaches, each researcher gives well-grounded contestation in favor of his viewpoint regarding the above issues and no needs to compare those understandings.

Appropriately, I argue that public participation in EIA process implies an interaction process among access to information and environmental governance. In which, access to information ensure that the public can be provided full, accurate, prompt and completed information to participate in EIA process effectively and constructively; while environmental governance, the formation of policies and the introduction of measures to mitigate undesirable consequences (Bulkeley & Mol, 2003, p. 144) is more effective through the public participation procedure. However, public participation hereby discussed means an emphasis on the interactions among stakeholders, and of course, this procedure cannot bring into play any changes without relationships with the other elements of environmental governance.

This dissertation also shows that public participation confronts the various difficulties and challenges in each country, particularly, between developed countries and developing countries, between democratic countries and monarchy countries and among the countries with different participatory cultures. To illustrate these differences, this dissertation has concentrated on the analysis of public participation in EIA process of Japan and Vietnam. Consequently, in both Japan and Vietnam, public participation in EIA is a mandatory procedure but differing in the participatory approach, the voluntary-based approach in Japan and the requirement-based approach in Vietnam. That is, in Japan anyone is officially given the opportunity to comment on the document on Primary Environmental Impact Consideration, scoping documents and draft EIS and they are directly involved in EIA process. *Per contra*, public participation in Vietnam’s EIA process is in a perfunctory manner, that is, the affected

people just attend the public meeting to receive information and give their opinions *ipso jure* without any direct involvement in the decision-making process. Moreover, both in Japan and in Vietnam, public participation, *via legis*, is restrained to the review phase of the EIA process, which precedes the final decision about a project. In Japan, the public has the right to express their comments from the planning stage of Primary Environmental Impact Consideration, the scoping stage and the preparation stage of a draft EIS as public inputs before completing the final EIS to submit for the final decision. By contrast, in Vietnam public participation is only implemented in the preparation stage of EIA report before submission for approval; as a result, the public shows reluctance to participate in EIA process, and normally in a passive manner. Thus, public participation in Vietnam is described the top-down and passive model, that is, the public is just informed of a policy, programme or proposed project and asked for their support (Hostovsky, MacLaren, & McGrath, 2010, p. 409).

As has been explained above, in Vietnam public participation in EIA process has a consultative trait, which does not empower the public to influence the decision (Arnstein, 1969). For instance, the goals of public participation in Vietnam's EIA process are not achieved *de facto* because of lacking specification *ipso jure*. The inadequate capacities and attitudes of government agencies in EIA process and a top-down manner through existing structures (People's Councils and People's Committees) at the provincial, district and commune levels as well as participatory culture in Vietnam are considered as some great barriers for achieving the objectives of public participation in EIA process. The EIA analysis and interviews revealed that the public participation in Vietnam's EIA process has been implemented in a perfunctory manner, leading to reduce the implementation of this procedure *in praxis*. Due to the fact that theoretically public participation in EIA process will achieve the effectiveness if all objectives of public participation are fulfilled in reality. The public has involved in Vietnam's EIA process passively and superficially. In practice, only affected people have attended the public meeting due to the compensation, relocation, and resettlement. This is easily understandable, given the fact that in

developing countries (namely in Vietnam) the public concerns are mainly economic benefits, particularly private benefits. Additionally, the public participation in EIA process in developing countries differs from the public participation in Western countries and developed countries because of the differences in the participatory culture and attitudes of governments (Hostovsky et al., 2010). Moreover, the specific socio-economic conditions also affect the participatory process of stakeholders in EIA process. This might explain the reasons of the more effectiveness of public participation in EIA process in Western countries, where democracy has already existed. The research findings have also shown that participatory culture, economic and political factors influence the implementation of public participation in Vietnam's EIA process. Thus, the empirical researches should be made in other developing countries in order to demonstrate that my research findings can be employed in other developing countries which own the same key characteristics of socio-economy, culture, politics and ecology.

Arnstein, S. R. (1969). LADDER OF CITIZEN PARTICIPATION. *Journal of the American Institute of Planners*, 35(4), 216-224.

Bulkeley, H., & Mol, A. P. (2003). Participation and environmental governance: consensus, ambivalence and debate. *Environmental Values*, 12(2), 143-154.

Glucker, A. N. D., Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C. (2013). Public participation in environmental impact assessment: why, who and how? *Environmental Impact Assessment Review*, 43(0), 104-111.

Hartley, N., & Wood, C. (2005). Public participation in environmental impact assessment—implementing the Aarhus Convention. *Environmental Impact Assessment Review*, 25(4), 319-340.

Hostovsky, C., MacLaren, V., & McGrath, G. (2010). The role of public involvement in environmental impact assessment in Vietnam: towards a more culturally sensitive approach. *Journal of Environmental Planning and Management*, 53(3), 405-425.

O'Faircheallaigh, C. (2010). Public participation and environmental impact assessment: Purposes, implications, and lessons for public policy making. *Environmental Impact Assessment Review*,

Stern, P. C., & Dietz, T. (2008). *Public Participation in Environmental Assessment and Decision Making*: National Academies Press.

審査結果の要旨

## 1. 本論文の概要

本論文は、一般には「環境アセスメント」（あるいは、略して「環境アセス」）として知られている環境影響評価制度における Public Participation すなわち「市民参加」に着目し、Nguyen 氏の母国であるベトナムの現在の環境影響評価制度の問題点と課題を指摘し、改善の方向性を具体的な対策案とともに提言するものである。

6章からなる本論文は、まず第1章で環境影響評価制度における Public Participation の意義と重要性に対する Nguyen 氏の関心を明らかにし、続く第2章では、環境影響評価制度と Public Participation に関する国際的な動向を、歴史的視点も含めて概観する。そして第3章では、Public Participation のありかたをより詳しく観察し考察する具体的対象として、日本の環境影響評価を、国（法律）および地方自治体（条例）の両者を含めて調査する。ここまでは図書等の刊行資料、そしてインターネット情報といった、いわゆる文献を資料とする研究であるが、Nguyen 氏の資料収集、およびその読み込みと理解は、十分に評価に耐え得るものである。

第4章はベトナムの現在の環境影響評価制度およびその具体的実施における Public Participation に関する考察である。ここでは Nguyen 氏は、複数の環境影響評価報告を入手し、それを克明に検討するのみならず、それらの環境影響評価の対象事業が行われた地域の住民や、環境影響評価に携わった専門家等を対象にインタビュー調査を行い、それらの結果をもとに、現在のベトナムの環境影響評価における Public Participation について、制度面での課題や、具体的な環境影響評価活動における問題点を指摘する。そして第5章では、このような問題や課題を抱えるベトナムの環境影響評価制度を、Public Participation という観点から（あるいは Public Participation という切り口で）改善するための方向性と、実現可能な具体的対応策を提案する。最後の結論（Conclusions：第6章）は、本論文で取り扱われた調査研究や考察をあらためて整理し、簡潔に提示するものである。

## 2. 本論文の評価

環境影響評価における Public Participation、すなわち市民一般や多種多様な NGO/NPO が参加することの意味と重要性は、欧米諸国や日本等のように、環境影響評価をすでに長い間実施している国々では広く知られている。しかし比較的最近になって環境影響評価制度を導入した途上国等では、この Public Participation は制度面においてまだまだ不十分であるのみならず、環境影響評価という活動におけるその意義・意味や重要性さえ、必ずしも正確に認識されているとは言えない。

そのような状況の中で、ベトナムにおいて実施されている現在の環境影響評価について、市民参加（Public Participation）という観点に着目し、制度の具体的活動の両面から詳細かつ克明に調査し、問題点と課題を明確に指摘するのみならず、その改善に向けての基本的な方向性と具体的かつ現実的な対策案を提示するという Nguyen 氏の本論文は、大きな特徴と意義・意味のある研究だと思われる。

もちろん Nguyen 氏の本研究にも、問題点がないわけではない。たとえば、それぞれの国の環境保全・環境管理全般における環境影響評価制度の位置づけが、それぞれの国の状況、特に環境法政策全般の歴史や発展段階等によって相当に異なるということの理解は、必ずしも十分ではないかもしれない。これは、日本の環境影響評価制度をベトナムの環境影響評価の現状と比較して論じる際に、たびたび気づかされる。とはいえ、こういった点は、外国の制度や状況を調査する際には、誰もが免れることのできない問題であろう。

Nguyen 氏のこの研究は、すでに以下の複数の国際学会や学会誌にて発表され公表されている。これらはいずれも事前審査が行われる、いわゆるレフリー制のものであることも、Nguyen Thi Anh 氏の研究の意義と価値を示すものである。

- Nguyen,T.A. (2015). Environmental impact assessment for sustainable development through public participation in Vietnam. *Proceeding of International Conference on Business 2015 (Corporate Social Responsibility & Sustainable Business Development)*. November 27, 2015 (ISBN 9786047337569).
- Nguyen,T.A. (2016). Promoting Transparency and Accountability through Public Participation in Vietnam's EIA Process. *Environmental Law and Society Journal (ELSJ) December 2016* (ISBN 9789350358665).
- Tran,V.L., Nguyen,T.A., & Nguyen,T.H. (2017). E-government without E-democracy in the case of Vietnam : transparency has been a shame? *Tidsskrifter Arkiv, Vol 8, Nr I (2017) : Trust and Transparency in E-Government* (ISBN 1891-8107).

以上の結果に基づき、本審査委員会は審査委員の全員一致で、Nguyen Thi Anh 氏の論文が審査基準 ①（学位請求論文に、レフェリー制があるか、または当該領域において定評のある学術誌に掲載されたか、または掲載される予定である論文が1つ以上含まれていること）に照らして、博士（法学）の学位を授与するのにふさわしい業績であると判断する。

注 論文及び審査結果の要旨欄に不足が生じる場合には、同欄の様式に準じ裏面又は別紙によること。