

## Theoretical Issues of Accountability and Accountability of the Heads of the State Administrative Agencies in Vietnam

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**Abstract:** The article has focused on clarifying the concept of accountability, the head and accountability of the head of the state administrative agency, indicating the factors constituting the accountability of the head of the state administrative agency, things to do with good results and things not to do; Obligations, rights and accountability taking of the heads of state administrative agencies in complying with the law and serving the people; In planning, making decisions and directing activities of the agency, organizing the performance of functions and duties assigned by the State and the people; pointing out the characteristics of accountability of the head of the state administrative agency in order to understand, regulate and unanimously perform the accountability of the head of the state administrative agency in Vietnam.

**Keywords:** Accountability, obligations, taking accountability, the head, the state administrative agency.

### INTRODUCTION

#### Concept of accountability

The term *trách nhiệm* is commonly used in daily life language as well as in legal documents. However, it is difficult to get a general definition of this term.

In English, two terms are referred to as "trách nhiệm": One is "responsibility"; The other is "accountability".

These two words are often used interchangeably, however, there is a fundamental difference between the two terms. "Trách nhiệm" with mean of "responsibility" is often understood as the things that have to do, as a duty, an obligation. "Accountability" has a broader sense than "responsibility", not just the things to do, but also the recognition and responsibility taking for the results. Accountability can be understood as a combination of responsibility, answerability and liability. "Accountability" refers to the ability of an individual/organization to recognize what they did when doing something; Simultaneously, it involves the interpretation, reporting, information, justification for such things and consequences, as well as the willingness to be under assessment, judgment, even punishment in both legal and ethical aspects for those consequences.

In this article, the author said that in the field of state management in general and state administrative management in particular, the term "trách nhiệm" should be construed in the sense of Accountability.

The term "accountability" is derived from the Anglo-Norman language (French used in England in the Middle Ages). Initially, it was very close to the term

'accounting', meaning bookkeeping. According to Dubnick [1], the origin of this word was from the time of the reign of William I, in many decades after 1066 when the Norman invaded England. In 1085, William demanded that all persons entrusted with properties in his kingdom must declare their possessions. All of these properties were evaluated and recorded in a Royal Book (called Domesday Books). This recording was not only for the purpose of collecting and paying taxes, but also as a means of establishing the foundation for royal administration. Over the centuries following the reign of King William I and to present, the term "accountability" has been no longer associated with a single field of financial management or bookkeeping, it has been also considered to be the basis of fair, indifferent and objective management system. Moreover, the term "accountability" is not only the accountability of the people to the Royal Family or the State, but also vice versa the accountability of the State to the people.

In many studies on accountability, the term is approached in a variety of ways, but most regard accountability as an indispensable element of the state management model in the new context today, namely New Public Management or Governance.

In Vietnam, there are also different understandings of the term "accountability". Some authors approach the term "accountability" in the sense of obligation, task, duty and authority. Author Do Minh Hop understands accountability is "the duty that has to perform, it is also the thing not to be done, to be done, that has to do and should do (...). Accountability is what they are forced to do and subject to the supervision of others" [2]. According to author Nguyen Van Phuc, accountability is "often understood as the ability of a person to be aware of his or her performance, as well as the ability to exercise its obligations in a self-conscious way" [3]. The author Cao Minh Cong said that "accountability is the performance of duties, obligations of the subject to other people, to the society in a self-conscious way. Accountability is opposed to irresponsibility, associated with taking responsibility" etc [4].

In general, these authors approach accountability in the sense of *obligation, task, duty and authority*. In this sense, accountability is the obligation, duty that has to do, should do, to be done or not to be done, it could come from voluntary, self-consciousness or conscription as required by social norms (law, ethics, etc).

Some authors understand that accountability means "responsible", implying the suffer from a certain adverse consequence. The author Le Nhu Thanh said that accountability "*is the adverse consequence (punitive reaction of the state) that public servants have to suffer when they fail to perform or improperly perform the assigned obligations, ie when violating the accountability in the positive sense. The negative accountability is shown in the application of measures to deal with subjects violating obligations and rights*" [5]. The concept of authors of the curriculum of Law on Administrative and Administrative jurisdiction of Vietnam on accountability for public affairs "*is the reaction of the State to the agency or individuals, cadres or civil servants when performing an administrative act in the course of performing public affairs, which is illegal or the decision of the superior agency, causing damage to or infringing upon the rights, freedom and legitimate interests of citizens, reflected in the application of corresponding legal remedies. As a consequence, the agency or individuals of cadres and civil servants have to suffer from adverse consequences or material and spiritual damages caused by state agency, competent person*" [6].

In this approach, the accountability is to take responsibility, to bear the consequences of what has been done, with the implication that the subject of accountability is borne a certain damage. For example, if civil servants violate the law on public affairs, they will be borne forms of administrative disciplinary action (such as reprimand, warning, dismissal) or civil

liability, criminal liability, etc., depending on the extent and nature of the violation. *Here, accountability means the adverse consequence that has to be borne, is responsible for the improper performance of obligation, task, duty, authority.*

The author argued that both of the two above approaches to accountability have rational points, depending on the purpose of the application, which can be used in one of two ways. However, the author also said that in the context of public administration, state management, if it is only merely understood in one of the two ways above, it seems to be insufficient when discussing accountability. For example, when it comes to "the accountability of the head of the state administrative agency," it should be understood as "the duties and obligations of the head of the state administrative agency" or should be understood as "the responsibility taking of the head of the state administrative agency"? The sole understanding in one of these two ways can lead to difficulties in regulating, reviewing and evaluating the accountability of the head of the state administrative agency.

Therefore, the author's view is that *there is a need to approach the term of accountability in a way that combines both aforementioned understandings*. That is, when discussing accountability in the field of state management in general and accountability of the head of state administrative agency in particular, it should be considered as a whole of two groups of factors:

- First, things that should do, have to do, to be done (Obligation, Right)
- Second, being responsible for the results of doing such things that should do, have to do, to be done.

This is also consistent with the understanding of "accountability" in the Vietnamese dictionary. According to the Vietnamese dictionary, the accountability is understood as follows: *1. The part assigned to or deemed to be assigned to, must be rounded, if the results are not good, the consequences shall be borne; 2. The binding of words, behavior, assurance of correctness, if wrong, the consequences shall be borne* [7]. The common point of both understandings is to consider the accountability of two basic components: *First*, things that should do, have to do, to be done as duties, tasks, authorities; *Second*, the commitment for the results of performing tasks, authorities and being responsible for these results. According to the author, this is a rational, full and comprehensive understanding of accountability, in which the first side is considered as the premise, the cause, and the second side is the inevitable consequence.

From the above analysis, it can be understood: *Accountability is things that should do, have to do, to be done with good results, if the results are not good, the consequences shall be borne.*

### **The head of the state administrative agency**

#### **Concept of the head of the state administrative agency**

In most of the current studies in Vietnam on the accountability of the head of state administrative agency, theoretical analysis of this issue have not received adequate attention, and the introduction of understanding about "the head of the state administrative agency" has not been rationalized.

In Vietnam, not many authors put forward the concept of "the head of state administration agency." It is perceived that *"The heads of the state administrative agencies are understood as heads of the State, Government, ministries, ministerial-level agencies and People's Committees at all levels"* [8]. It can be seen that this understanding only determines who is the heads of state administrative agencies, but does not provide a way to understand what the heads of state administrative agencies is.

Another concept is that: *"The head of a state administrative agency is a legal institution which establishes the highest position in a State administrative agency with the respective powers and responsibilities to accomplish well the role of the head "* [9]. Another author said that: *"In the narrow sense, the head is an individual (leader) who has the power to lead, manage, command, organize a certain unit or organization to accomplish the goals of management leadership that have been set. In broader sense, the head is an individual or a collective with a certain level of authority in leadership, management, taking a certain responsibility and commanding, organizing a certain unit or organization to accomplish the goals of management leadership that have been set"* [10].

The author concurred with some points in the understanding of the two authors who argued that the head of the state administrative agency is "a legal institution"; "Establish the highest position"; "Is an individual"; "Have power in leadership, management". However, the above understandings have not fully defined in terms of inner implication of the concept of the head of the state administrative agency. At the same time, there are some points in the above understandings that the author has not really concurred, such as the second one that "in the broad sense, the head is only an individual or a collective."

Based on the concept of "the head of organization" in Vietnam, at the same time, based on the inheritance, development with criticism of a number of existing concepts, the author considered that it is

needed to understand the head of the state administrative agency as follows:

*"The head of a state administrative agency" is the term used to refer to the institution which holds the highest legal position in a State administrative agency, performs the leading role and manages the operation of a state administrative agency, has the highest obligation and authority over the operation of the State administrative agency and takes responsibility for the operation of such State administrative agency.*

The system of state administrative agencies includes the Government, Ministries, Ministerial-level agencies, People's committees at all levels and specialized agencies under the People's Committee [6]. Accordingly, the heads of state administrative agencies in Vietnam consist of the following key titles: Prime Minister, Ministers, Heads of Ministerial-level agencies, Chairmen of People's Committees at all levels, Directors of Departments, Heads of Divisions and equivalents.

### **Characteristics and legal status of the head of a state administrative agencies**

The legal status of the head of a state administrative agency has some basic characteristics as follows:

*First, the head of the state administrative agency is the legal position.*

The system of state administrative agencies is characterized by the establishment of the State, with the organization and operation in accordance with the laws and regulations [11]; therefore, the head of a state administrative agency must be a legal position. Those who are in the position of the head of a state administrative agency are officially recognized by the law. All matters related to the formation, operation and termination of a title of the head of a state administrative agency shall comply with the provisions of law.

*Second, the head of a state administrative agency operates in the name of the state.*

The State establishes state administrative agencies to perform the functions and tasks of the State. Thus, the state delegates state administrative agencies and positions in state administrative agencies- including the head of a state administrative agency to perform certain competences. These competences are the legal means for the head of a state administrative agency to perform the role of the head. The competence of the head of a state administrative agency shall be the sum of the powerful and legal rights and obligations as prescribed by law. When executing the rights, the head of a state administrative agency is in the name of the

state, representing the state power. The head of a state administrative agency may use public power and public resources to perform its functions, duties and powers. This is the basic characteristic to distinguish the head of state administrative agency from the head of a social organization.

*Third, the legal status of the head of a state administrative agency is governed by the hierarchical and imperative administrative relations.*

In order to carry out the state administrative management function in the areas of social life, the state administrative system of most countries in the world is hierarchical, which includes subordinate and superiors, and the decentralization is in accordance with the requirements of state administrative agencies in each historical period. In Vietnam, the state administration is composed of a close hierarchical institution from the central to the local level, in which the subordinates submit to the superiors, receive directions, orders and subject to inspection and supervision of superiors. Thus, the legal status of the head of a state administrative agency is governed by a hierarchical and imperative administrative relation. For example, the prime minister is the head of the Government and is responsible to the National Assembly, the President and the National Assembly Standing Committee for the tasks and powers prescribed by the Constitution and the Law on Organization of the Government. Ministers and heads of ministerial-level agencies are heads and leaders of one ministry or ministerial-level agency, in charge of a number of Government's tasks, are responsible to the Prime Minister and the National Assembly for the state management of branches and fields in the entire country or the assigned tasks. The Chairman of People's Committee shall be the leader and administrator of the work of the People's Committee, takes personal responsibility for the performance of their tasks and powers together with the collective of the People's Committee on the activities of the People's Committee before the People's Council of the same level and the superior State agencies.

*Fourthly, the head of a state administrative agency is the person who performs the leadership and the management role of the state administrative agency.*

From the conceptions and rules of the head of an organization, it can be understood that the leader of an organization is the person who performs leadership and management role in the organization. There is also no exception for the head of a state administrative agency. The head of a state administrative agency is the person who performs the leadership and management role to the state administrative agency headed by him.

However, it should be added that this characteristic also arises from the particularity of the relationship between the political and administrative factors in the state administrative offices in Vietnam today. According to the author Dang Xuan Phuong, depending on the characteristics of the political system in each country and the theory of state administrative organization, there are two modes of leadership and administration for the state administrative agencies: First, the political leadership is independent from the administrative management: this mode only establishes the leadership role without allowing the head of a state administrative agency to be directly involved in the administration of state administrative agencies. For example, for countries traditionally representing the "Westminster" parliamentarism in British as well as mainland European countries obeying parliamentarism (Germany, Italy, Sweden ...) and the bisexual republic (France ), the minister has only a leadership role without directly participating in managing the ministry's administration. Second, political leadership is consistent with administrative management: this allows the head of a state administrative office not only to play the role of a leader but also a manager, both leading and directly running the operation of a state administrative agency. Vietnam is the country that implements this leadership. In addition, socialist countries in Eastern Europe (old), China, and even the countries of the presidential republic also apply this method [12]. Thus, in the current Vietnamese administration, the role of the heads of state administrative agencies is united: both the political leader and the administrative manager. There is no separation between these two roles. Therefore, the head of a state administrative agency is the person who simultaneously performs the "leadership" and "management" role for activities of a state administrative agency, closely and comprehensively attaches with the performance of the functions and duties of the agency headed by him.

### **The conception of accountability of the head of a state administrative agency**

#### **Understanding the head of a state administrative agency**

On the basis of the above analysis of the term "accountability", from the perspective of state management, "accountability of the head of a state administrative agency" can be understood as follows:

The accountability of the head of a state administrative agency is what the head of a state administrative agency should do, must do, and is facilitated to do with good results. If the results are not good, the head of a state administrative agency must take accountability.



### Components of the accountability of the head of a state administrative agency

On the basis of this conception, the accountability of the head of a state administrative

agency consists of three basic components: *Obligations, Rights, and Taking accountability for the performance of those obligations and rights.* The general formula is as follows:

$$\text{Accountability} = \text{Obligations} + \text{Rights} + \text{Taking accountability}$$

First, the obligations of the head of a state administrative agency

Obligations of the head of a state administrative agency can be understood as the activities they should do, must do or must not do at the present and in the future. According to this understanding, the obligations of the head of a state administrative agency include *things that should be done, must be done, and must not be done.*

*Things should be done* are the things done by the head, originated from self-consciousness of his mission. Legally, stating what is "to do" or "not to do" for the head of a state administrative agency is unjustified. However, the accountability of the head of a state administrative agency is considered under not only the legal but also political and moral aspects. This means that the requirements for the accountability of the head of a state administrative agency can go beyond what regulated by the law. With such an approach, the obligations of the head of a state administrative agency are not only things to do, not to do, but also "should do" to achieve the highest efficiency in state management and public service supply.

*Things must be done* are specific duties (or specific public services) called with different names such as duties and public services that the head has the obligation to fulfill in accordance with the law.

*Things must not be done* the things that the head of a state administrative agency is limited to do because of the characteristics of the public service and the position as a head.

Obligations of the head of a state administrative agency may be considered in many respects.

*From the perspective of a leader, a manager,* the head of a state administrative agency has the obligations that must be done by any person in the highest position in the organization, which is to perform the role of a leader such as establishing a vision for the organization; gathering people; cheering and encouraging the whole team; building up strategies for the organization; making decisions; making changes; creating a healthy work environment [13], and to perform the role of a manager, such as making plans, budget, organizing, staffing, controlling, and solving problems [14].

*From the perspective of an employee of a state administrative agency* - a type of organization with particular roles and characteristics, the head of a state administrative agency must also carry out specific obligations that are regulated by any public service of any country such as: to obey orders from superiors, to serve people, to keep the State secrets, not to do prohibited things...

*In general,* the head of a state administrative agency has the following basic obligations:

- To obey the laws of the State and directions from the superior.
- To serve people
- To define vision, to plan activities for state administrative agencies
- To direct, organize and manage the agencies to properly perform their functions, tasks and powers, to be responsible for their performance and all activities of the agencies assigned to lead or manage.
- To make decisions and to take responsibility for those decisions.
- To organize apparatus, to assign works.
- To manage cadres and civil servants.
- To manage finance and assets.
- To manage information, to keep State secrets, to explain when required
- To inspect, urge and guide the performance of public services by cadres and civil servants, and to handle violations within their competence.
- To motivate employees.
- Must not do prohibited things...

Second, right of the head of the state administrative agency

*Right* is behavioral capacity of the head of the state administrative agency to implement assigned tasks. Right of the head of the state administrative agency is concretized in the form of *power*. As a leader and manager, the head of the state administrative agency must have powers corresponding to obligations. For example, with regard to obligations to manage cadres and civil servants, finance, assets and information, the head of the state administrative agency must have powers corresponding to such obligations, and these powers are in the form of *power to make decisions* at his or her discretion. Therefore, at the state administrative agency, the head has the highest decision-making power over the Agency's activities. However, because the state administrative agency has

characteristics such as hierarchy and operation in the specified scope of authority, powers of the head of the state administrative agency are only in the scope of powers defined according to legal regulations.

Third, Taking responsibility by the head of the state administrative agency

In the broad sense, “taking responsibility” means accepting responsibility for success or failure of an undertaken task and means a consequence which must be accepted by a person due to right and obligation constraint: reward in case of success and punishment in case of failure. In this sense, the fact that a person who is given a reward or punishment means taking responsibility. In the narrow sense, taking responsibility is synonymous with punishment and means bearing an adverse consequence due to failure in the implementation of obligations and rights. In this article, the author understands “taking responsibility” in the narrow sense.

If the *result* of obligation and right implementation is not good, the head of the state administrative agency must take responsibility. In this article, “result” means anything obtained after the management process, including direct result and final result. Direct result is determined in terms of quantification of tasks completed by the head of the state administrative agency. Final result is impact on the achievement of objectives and tasks with social significance by the state administrative agency [14].

Having the highest decision-making power cover activities of the state administrative agency, the head of the state administrative agency must take responsibility for activities as well as operation results of the state administrative agency. The head of the state administrative agency must be responsible to various subjects in different forms of sanctions depending on types of political, legal or moral responsibility.

#### **Characteristics of responsibility of the head of the state administrative agency**

*First, responsibility of the head of the state administrative agency is of profound social nature.*

Activities of the state administrative agency are characterized by execution, state management and public service supply. For this reason, these activities have a direct and great impact on individuals, organizations and enterprises and are like a connection whereby policies and laws are realized. Responsibility implementation by the head of the state administrative agency has a direct or indirect impact on benefits of individuals, organizations and enterprises in the society. Therefore, it is possible to say that management and leadership activities of Head of the state administrative agency has a great impact on the society's operation and are associated with socio-economic development

and life of the people in each locality, sector and field. If a locality, sector or field is underdeveloped, the society will place the responsibility on state administrative agencies. In reality, experience in Vietnam and other countries in the world showed that, promulgating policies and decisions, heads of state administrative agencies, especially heads of central-level state administrative agencies, can change political, social and economic life of a community, a region or the whole country, in some cases can change the way of a nation in certain period, and even can change relations with other nations. Heads of local-level state administrative agencies can change life of residents in a certain administrative unit [4].

Social nature of activities of heads of state administrative agencies is also characterized by regularity and continuousness of management and public service supply. Activities of heads of state administrative agencies are very different from those of heads of legislative bodies or organs of justice. Execution and management activities are carried out daily and hourly, while legislative activities are carried out periodically, for example, legislative activities in Vietnam occur every two years. Courts' activities are only implemented when there are right disputes or legal violations, and such implementation is subject to legal regulations. Control and supervision activities are, in principle, only carried out when there are legal violations (such as control and supervision of investigation, prosecution, trial, judgment enforcement, etc.)

*Second, responsibility of head of the state administrative agency is personal responsibility.*

This characteristic implies that at a specific state administrative agency, talking about the “head” is synonymous with mentioning a single individual who holds the highest position at such agency. As a result, the term “head of the state administrative agency” is not used to refer to a team. With regard to leadership and management activities, there are three basic leadership and management regulations (working regulations): *First*, leadership and management based on the personal role of the head (also called leader regulation) – forming head institution); *Second*, leadership and management based on the principle of collective power – leadership team regulation; *Third*, leadership and management based on the combination of team leadership and personal responsibility [12]. Therefore, the “head” institution is the leader (individual) institution. Head regulation (other equivalents: leader regulation and regulation for a head) is a management principle in which an organization's head is empowered to implement assigned tasks and functions and he or she must be responsible for the result of task implementation. Unlike the head regulation, the team

regulation is a management (leadership) principle in which powers are granted to a team of individuals and each must be responsible for a certain field. The “pure” form is consent regulation (decisions will only be made when all members agree). The common form is the regulation on equal rights granted to all members; each member has a vote, and majority rules are applied [15]. For this reason, the author does not agree to the fact that another author thinks that “*In the broad sense, the head refers to an individual or team having certain powers in leadership and management, taking responsibility and directing a unit or organization to implement specific leadership and management objectives*” [9]. Believing that the head is both individual and team is improper and can confuse leadership and management regulations of very different nature.

Thus, at a specific organization, based on the legal official position, the head is always a single individual. This is a difference which is significant in determining the head’s responsibility. The term “head” is absolutely accurate; therefore, the head’s responsibility is also absolutely determined. That is specific responsibility of the only individual having the highest position in an organization – the head.

*Third, responsibility of head of the state administrative agency is inclusive: First*, the head of the state administrative agency is responsible for all problems during the management of the state administrative agency. *Second*, the head of the state administrative agency takes responsibility for both his or her activities and activities of cadres and civil servants under him or her during task implementation (joint responsibility). *Third*, the head of the state administrative agency bears responsibility as a civil servant and as the head of the state administrative agency. In case of the same legal violation, responsibility of the head of the state administrative agency may be higher than that of a cadre or civil servant who is not a leader. *Fourth*, the head of the state administrative agency is not only responsible to the internal system but also the society including individuals, organizations and enterprises.

This is an answer to the question: why must an organization have the head? This is because the head is needed to manage the organization’s activities and represent the organization’s authority. Such management is characterized by making decisions and especially taking responsibility for activities and operation results of the organization, even in case of delegating powers to cadres and civil servants under the head. This is true to the statement of Robert Tannenbaum and Warren H. Schimidt: “*The leader must be responsible for decisions made by inferiors although such decisions were approved by the team. When delegating powers to inferiors, the leader must bear all potential risks. It is*

*permitted to delegate powers to inferiors, but not permitted to refuse responsibility.*”

Based on the above-mentioned analysis, it is possible to understand that the term “head of the state administrative agency” is used to refer to the highest institution for legal position, rights and obligations at the state administrative agency whereby the head plays a management and leadership role and takes responsibility for operation results of the state administrative agency. The head of the state administrative agency must know things to implement and things to avoid. Obligations, rights and responsibilities of the head of the state administrative agency are characterized by complying with laws, serving the people, planning, making decisions, managing the organization’s activities and implementing functions and tasks assigned by the state and the people.

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