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Original Article

From Real to Fictitious Personality: The Concept of Juridical Person in Soviet Civil Regulations and Influences on Russia, China and Vietnam

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Abstract: How did the Soviet "juridical person" concept impact the contemporary conceptualization of legal personality in Russia, China, and Vietnam? To find an answer to this inquiry, this article explores the historical progress of "juridical person", tracing its origins from 19th-century theories, through 20th-century communist civil regulations, to its present form. To unravel the progression, the doctrinal method and comparative law methods serve as research methodologies. The theoretical framework surrounding "juridical person" recognizes two distinct doctrines: fictitious personality and real personality. With these doctrines, a careful examination of civil regulations in the targeted countries was undertaken. The findings reveal a remarkable consistency: all three legal systems predominantly follow the fictitious doctrine when conceptualizing "juridical person" in their civil regulations, especially their Civil Codes. While variations exist due to ideological and historical contexts, this uniformity emphasizes the enduring influence of Soviet law and legal tradition on legislators' approach to this concept across these nations. The recent divergence also becomes comprehensible when observed from doctrinal and historical perspectives.

Keywords: Juridical person, legal personality, Soviet law, Russia, China, Vietnam.

1. Introduction

For hundreds of years, very few legal concepts have been as topical as "juridical person". Originating from Western capitalism, it has been adopted since the 19th century by both common law [1] and civil law jurisdictions [2]. The common-law countries mostly refer to it as

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"corporate personality". Meanwhile, Western civil laws use the term "juristische personen" in German and "personne morale" in French, which could be translated into English as "juridical person", "juristic person", "juridical entity" or "artificial person". The Western concept of "juridical person" has also been embraced by socialist countries, starting with the Soviet Union. While Soviet law has sometimes been classified by scholars as a legal system separate from civil law tradition, it has one of its fundamental characteristics of this tradition, a Civil Code [3]. In the first Soviet Civil Code, a term similar to "juridical person" was included and continued to be included in other Soviet civil legislation. It is "юридическое лицо", which is literally translated into English as "legal entity". Although the Russian term "юридическое лицо", the Chinese "法人 Fǎrén", and Vietnamese "pháp nhân" literally means "legal entity/person" in English, we will refer to the central concept of this article as "juridical person" due to two reasons. First, to be consistent with the original German terminology; and second, to avoid confusion since the English term "legal person" could be understood as including both "natural person" and "juridical person".

With the spread of communist ideology, Soviet law has affected the other socialist legal systems. Even after the collapse of the Soviet Union, its law model still impacts the modern world, most notably in post-Soviet Russia, China, and Vietnam. The idea of "juridical person" is one of these Soviet influences, with its presence in the former and contemporary civil legislation of these nations. This concept has become complex after being transplanted from the West to the East, and from capitalist to socialist legal systems. Its understanding has been further complicated since Russia, China, and Vietnam started having different developmental directions for the nations and their Civil Codes. These differences will be analyzed in this article along with the central concept - "juridical person".

Meanwhile, being one of the major legal notions, its understanding demands clarity. The concept's inherently complex nature leads to this demand not being met in Vietnam. The civil law coursebooks of leading law schools in the countries failed to clearly explain the concept of "juridical person" [4,5]. These works instead rely on the official regulation of the government, which is not without shortcomings itself, to explain. We believe that this situation stems from an inadequate understanding of the theoretical and historical background of the concept in Vietnam. There are some Vietnamese academic works on the theories; however, most are limited by the lack of theoretical primary sources and have not been considerably updated since publication. Regarding the historical aspect, those works do not refer to Soviet civil laws when discussing "juridical person" [6-8]. Therefore, extensive research on this concept through both theoretical and historical perspectives is required. We expect that this article will contribute to a new perspective to the discussion of "juridical person": a theory-based comparison of how the Soviet, Russian, Chinese, and Vietnamese legislators include the concept in their civil regulations.

Focusing on the development of the concept "juridical person" through communist history, we will not examine the whole, multi-disciplined regulations of "juridical person". Within this article, our research will be limited to where the concept has been defined - civil regulation of each country. With the mentioned focus, we also adopted a descriptive approach to the concept, rather than a prescriptive one. Therefore, we will not comment on any regulation but just present how the regulatory history of "juridical person" has happened.

2. Two Major Personality Doctrines on "Juridical Person": Fictitious and Real Personality

Before getting into an analysis of civil regulations, we must start with the doctrine that

clarifies the nature of a juridical person. That nature, since the 19th century, has been unraveled through several theories promoted by Western jurisprudence. These theories have become the standard for explaining the personality of "juridical person", being recognized in Western academia [9] as well as by Russian [10], Chinese [11], and Vietnamese scholars [6] despite a period of rejection on the basis of capitalism. There are several theories with diverse positions aiming to serve as the model to explain "juridical person", but all belong to two contrasting doctrines - real personality and fictitious personality.

2.1. The Fictitious Personality Doctrine

The fictitious personality doctrine was started by the theory of Friedrich Carl von Savigny, which is known as the traditional theory or theory of fiction [12]. Savigny claimed that "the original concept of person must coincide with the concept of human being, and this original identity can be expressed as follows: every individual human being, and only the individual human being, possess legal capacity" [13]. According to Savigny, legal capacity (Rechtsfähigkeit) can be extended by the law to imaginary subjects like corporations, which is a legal fiction because imaginary subjects do not have the "spirit of the people" (Volksgeist) [13]. Savigny's Volksgeist should be taken as a reference to the shared cultural attributes of a people (or its elite), especially its intellectual tradition [14] or, to put it simply, free will [12]. Therefore, "juridical person", according to this theory, is a fiction to which the will, rights, and obligations of its collective representatives were assigned, giving it the opportunity to engage in legal relations [15].

In the development of the theory of fiction by Savigny, the theory of targeted or non-subject rights was proposed by Bernhard Windscheid and Alois Ritter von Brinz, essentially based on the same idea of fictitious legal personality. Windscheid recognizes that in some cases, rights and obligations exist independently of or without the subject [16]. Brinz went on to argue that the rights and obligations of "juridical person" can be the rights and obligations of either an owner or its assets. In the latter case, the subject of a fictitious "juridical person" is the purpose of its creation [17].

Another direction of developing the theory of fiction was the theory of interest by Rudolf von Jhering. For Jhering, only the natural person has personality because he/she is the sole recipient of rights, which he defined as "legally protected interests", contrary to juridical persons who do not enjoy that. His theory proposes that the "protected interests" of a "juridical person" belong to natural persons who use common property and benefit from it, or in other words, the holders of "interests". Their common "protected interests" are represented by a "juridical person" [18]. Therefore, the subject of a fictitious "juridical person" is the common interest.

The three previous theories were greatly different; however, they all have the characteristics of the fictitious doctrine. Those who support this doctrine believe that the law does and should operate with a natural conception of the person, with natural persons being the "original" legal person, even if legal personality can be extended to imaginary subjects like corporations through legal fiction. Therefore, something properly classified and recognized by any system of governance as a legal person, a juridical person in particular, must satisfy a set of characteristics that are central to legal personality [9].

2.2. The Real Personality Doctrine

Like the fictitious doctrine, the real personality doctrine also has several theories. Simultaneously with the theories of Savigny and others, Georg Beseler succinctly defined "juridical person" as an association of several persons for the achievement of common purposes in the long term. This association is a special social organism, "spiritual reality", or

"human union". It has its own will, which is not reducible to the totality of the wills of its member individuals [19].

Later, also based on the idea of "organism", Otto von Gierke developed a cooperative theory, which assumes that "juridical person" "revealed" themselves to the outside world as organ administrators through the natural persons in the organ. To the members and to the "juridical person", its organs are not independent third parties, their intentions and actions are identical to those of "juridical person" [20].

Hans Kelsen claims that a legal person, including both the natural person and the juridical person, is nothing else than a bundle of rights and duties. When taken together, this bundle is metaphorically expressed as the concept of "person". Meanwhile, "man" or human being, according to Kelsen, is a physical entity to which the bundle is assigned [21].

Basically, the view of those who support fictitious doctrine is contrasted with that of real doctrine followers, according to whom one's legal nature should not be confused with one's nature beyond the limits of law. Real doctrine followers believe that legal personality is just a legal device, and when the law treats corporations as legal persons, this is simply a distinctive use of the word "person" rather than any fictitious understanding of human beings [9]. They accept that juridical persons are real just like natural persons, and the concept of a "legal person" is not limited to human beings. "Juridical person", to them, is not fiction.

3. The Soviet Approach to the Concept of "Juridical Person"

In the previous part of this article, we already established the theoretical background of the central concept - "juridical person". Although the theories of both doctrines originated from Western scholars, predominantly German ones, academic works showed that their colleagues in the Soviet Union have also been aware of and criticized the doctrines for a long time [10]. The question is how their awareness and critique of the Western-made standard for explaining legal personality were reflected in the official regulations of "juridical person". The article will address this question through a conceptual analysis of Soviet civil legislation, preceded by a brief introduction of those legislations' historical backgrounds.

3.1. The 1923 Russian Soviet Federated Socialist Republic Civil Code

The Civil Code of 1923 was the first Soviet Civil Code and the first Russian Civil Code (Гражданский кодекс) [22]. Although it was in fact the Code of the Russian Republic, it enjoyed nationwide recognition just as a federal civil code [23], while a true federal civil code would have never been adopted. This code marked a transition period from a capitalist to a socialist society. Under Lenin's New Economic Policy with the urgent call for a restoration of civil law, the code was formed in just three months with references to the German, Swiss, and French Civil Codes (dominantly the German codes), together with the 1913 Civil Code draft of the Russian Empire. Being in force for more than 40 years, it was initially drafted as "an interim, temporary law", a "narrow horizon of bourgeois law" [22]. Therefore, it has the nature of socialist ideology combined with Western economic liberalism [24]. Its regulation of "juridical person" indicated that dual nature.

"Juridical person" is defined under Article 13 of the Civil Code of 1923 as "such associations of persons and such organizations or institutions as may, in their own name, acquire rights in property, assume obligations, and sue and be sued in court". The creation of a "juridical person" requires state registration/approval of its charter/partnership contract, which is the prerequisite for the legal capacity to begin (Article 14), and a private "juridical person" even needs state authorization (Article 15). The legal capacity of "juridical person" is limited by the charter/contract/State interest, and it must act in conformity with those limits; otherwise, the

state would terminate its existence (Article 18). A specific example of this limited legal capacity is that any "juridical person", together with any natural person, may participate in international trade only with permission from the State (Article 17).

"Juridical person" under the Code requires recognition (registration, approval, or authorization) from the system of governance (the state), and the characteristics of legal personality - "in their own name, acquire rights, assume obligations, and sue and be sued in court". "Associations of persons" were considered similar to Verein in German and Société in French, referring to private corporations; while "organizations or institutions" (Stiftung in German, Fondation in French), were primarily the government agencies managing the state-owned industry and commerce [10]. Each agency is a collection of properties whose subject is a definite purpose detailed under its charter or contract. This type of agency closely resembles how the theory of targeted rights or the theory of interests is described.

In our opinion, the approach to "juridical person" of this Civil Code basically reflects the approach of the Western-originated fictitious doctrine, and it might easily have been included in the civil code of any capitalist civil law country, as Vladimir Gsovski commented [23]. However, with the dual nature of a Civil Code under New Economic Policy, "juridical person" in this Code also represents the socialist elements through a narrow legal personality with the State's supremacy in civil relations as stipulated under Articles 17 and 18. It would be hard to fully explain the types of non-independent corporations by the notions taken from capitalist countries without referring to the socialist ideology, especially total state ownership. It was noteworthy that the 1923 Civil Code recognized private ownership (Article 58); however, the 1936 Constitution of the Union of Soviet Socialist Republics (USSR) removed it by only recognizing state ownership and personal ownership for the citizens - who must be natural persons.

The concept of "juridical person" in the Code was marginalized by the change in Soviet society between 1930-1950, with the disappearance of private corporations [25]. All legal entities were then considered state entities, making the regulations of the Civil Code no longer useful in showing the actual legal situation. At the same time, the Soviet jurists started rejecting Western theories. The 1944 Civil Law textbook of the Soviet Union, page 196, stated that: "Not one bourgeois jurist gave a correct explanation of the nature of a legal entity as a form of expression of some specific social relation because the ideology of these jurists is limited by the views of their class". The Soviet jurists offered some replacements by imposing total state ownership of all economic resources while granting individual entities some limited freedom to handle these resources, but none became a constructive theory to "bridge the gap between law and life" [10]. The 1944 Civil Law textbook of the Soviet Union described the real situation in the Soviet society with the following definition: "Legal entities are called such institutions, enterprises, and public organizations as appear in civil legal relations in their own name by virtue of a statute, charter, or by laws, in the capacity of entities with segregated property, and independently bear financial liability for their obligations". Vladimir Gsovski considered this description "more accurate than", but "also shows a departure" from Article 13, prompting a redrafting [10].

3.2. The Fundamental Principles of Civil Legislation of the Union of Soviet Socialist Republics and Union Republics, and the 1964 Russian Soviet Federated Socialist Republic Civil Code

Between the two Russian Soviet Federated Socialist Republic (RSFSR) Civil Codes of 1923 and 1964, civil codification was centralized, with the Union of Soviet Socialist Republics (USSR) 1936 Constitution transferring the Republics' rights to make civil codes to the legislature of the whole USSR. In the period of 1946-1952, the Civil Code of the USSR was drafted three times; however, all to no avail.

When Stalin was succeeded by Khrushchev, the Republics' rights to adopt their own civil codes were restored, while the Supreme Soviet of the USSR was entitled to make the 1961 Fundamental Principles of Civil Legislation, which served as "a framework for the Republics' civil codes", most notably the 1964 Civil Code of RSFSR [25]. The definition of "juridical person" in Article 11 of the Fundamental Principles was fully adopted in Article 23 of the 1964 Civil Code, while other articles were similar. Therefore, our focus will be on this Civil Code.

Unlike any civil code passed in Russia, this 1964 Civil Code is without Western European influence. The major references of this Code are the 1923 Civil Code, the 1961 Fundamental Principles of Civil Legislation, and Soviet legal theories. The 1964 Civil Code was filled with ideology, with a political preamble claiming that the Soviet Union had achieved a total and definite victory of socialism and had entered into the period of extensive construction of the communist society. It was no longer perceived as a temporary law not needed in a communist society, but rather "a means that contributed to the construction of the communist society" [22]. The regulation of "juridical person" was also different from that of the previous Civil Code.

Article 23 of the 1964 Civil Code stated that "[o]rganizations which possess separate property may in their own names acquire property as well as personal non-property rights, have obligations and may act as plaintiffs and defendants before a court, arbitration or private arbitrators, are juridical persons". This definition is not much different to the previous one, with the same structures and some technical changes. "Juridical persons" under this Code have separate property, may acquire not only property but personal non-property rights, and can resolve conflicts not just in court but through arbitration or private arbitrators. The creation of a "juridical person" still requires the action of the state, in the form of ratification/registration of a charter or promulgation of legislation forming that "juridical person" (Article 25-27). The legal capacity is also limited by the purposes of its activities (Article 26), which shall be established by the state. The state also retains the power to terminate "juridical person" (Article 37-39), although the conditions are no longer detailed in the Civil Code. Therefore, we believe the approach of the Western fictitious doctrine was essentially maintained.

The biggest change, not indicated in the definition, is that "associations of persons" no longer exist, and all juridical persons are non-private, including state/public organizations, collective farms, other cooperative organizations, and associations (Article 24). This change went together with the change in the regulation of ownership under Article 93 of this Civil Code, removing private ownership of "juridical person". The change was, in fact, a shift in Soviet society fueled by the 1936 Constitution of the USSR, which was codified into the Civil Code. It made the gap between the previous Civil Code and life disappear, and the legal theories proposed by Soviet scholars became more accurate.

The most dominant theory was upheld by Professor Venediktov, who described the subject of "juridical person" as a collective of its workers representing a nationwide collective of workers in a specific "juridical person", while the nationwide one organized into the state [26]. This theory aimed to circumvent the absolute state ownership, explaining that the small parts of the "united socialist property" are managed by "juridical person" without any change of property's ownership. The theory was criticized by Vladimir Gsovski as elusive, with "juridical person" hardly differing from a government agency [10].

We cannot help but see a parallel here with Jhering's theory of interest, an expanded version with the "nationwide collective of workers" holding state "interest" in the form of ownership. Anyway, it is still the approach of the fictitious doctrine, with "natural person", workers, being the true subject of civil law, and the role of the state in creating a fictitious subject to represent their collective interest. An unofficial Russian

collection of "juridical person" theory seems to agree with us. By placing Jhering and Venediktov in the same category, the author of this collection suggested that the two theories are close [27].

In short, we consider that the Soviet approach to the central concept of this article fundamentally followed the fictitious doctrine, with some variations to explain the reality of total state ownership and the non-existence of private corporations that appeared in the years between the two Civil Codes of 1923 and 1964. This socialist direction made "juridical person" in the Soviet legal system unique among the civil law tradition.

4. The Approach to the Concept of "Juridical Person" in Russia, China and Vietnam

The third part of this article examines the ways Soviet Civil Codes constructed the concept of "juridical person" through the perspectives of some Western and Soviet theories. It all shows the features of the fictitious doctrine, blended with the codified socialist ideology. Next, we will continue with the respective regulations of Russia, China, and Vietnam, to discover whether the direction of Soviet legislators influences their Russian successors, as well as their Chinese and Vietnamese colleagues. The historical progress of the concept and the continuity of the theories will be scrutinized.

4.1. The Russian Approach: the 1994-2006 Russian Civil Code

The end of Soviet rule and the birth of the Russian Federation signaled a new era for the Russian legal system. The Constitution of the Russian Federation, adopted in 1993 as the first directly applied Russian constitution [22], restored the right to private ownership. It proclaims that the right of private ownership is an inalienable right and protected by the law, and even accepts almost verbatim article 545 of the French Civil Code: "No one may be deprived of his property otherwise than by a court decision. Expropriation of property for public utility may be conducted only and in consideration of a just and prior indemnity".

These profound and rapid social changes required a new Civil Code as soon as possible. Therefore, the first part on general principles of civil legislation, including the regulation of "juridical person", was promulgated in 1994. Learning from both domestic (The 1913 draft of the Civil Code of the Russian Empire, the 1964 RSFSR Civil Code, the 1991 draft Fundamental Principles of Civil Legislation of the USSR) and foreign sources, including some of the most classic civil codes (The German Civil Code and the French Civil Code) and most modern counterparts (Civil Code of Quebec, Dutch Civil Code, and United Nations Convention on Contracts for the International Sale of Goods CISG), the Code does not feature any noticeable difference from the civil law of Western countries [22]. The regulation of "juridical person" shows this spirit.

Article 48 of this Civil Code defined the concept as "an organization that has separate property and is liable with it for its obligations, may in its own name acquire and exercise civil rights and bear civil liabilities and may sue and be sued in a court of law". Basically, the definition of the 1923 Civil Code is restored. Moreover, alongside state/public organizations, private "juridical person" was reintroduced in various forms, categorized into two main groups of commercial and non-profit organizations (Article 50). The concept of "juridical person" is no longer reserved for state/public organizations as in the 1964 Civil Code.

"Juridical person" now has a legal capacity that corresponds to the goals of its activity, stipulated in its constituent document, a new term referring to charter, which is endorsed by either the founders or modeled on a charter published by the state. The creation of a "juridical person" in this Code still requires state registration, but the registration is preceded by a private decision of the founders (Article 50.1, 51). The private founders' role is expanded, while the state's role is reduced. The liquidation

of a “Juridical person” is also stipulated under this tendency, including not just liquidation by the state (through the juridical process, not by a unilateral state decision), but also by a decision of its founders, the expiry of the term, and the attainment of the objective for which it has been formed (Article 61). In short, the regulation maintained the structures of the previous ones but removed the socialist characteristics.

There are two observations from this regulation. First, without the socialist ideology embedded in the Soviet Codes, “juridical person” under the Russian legal system now enjoys the same independence as described in the Western-originated theories. It is a departure from the Soviet direction. Second, this way of regulating the concept clearly shows that this new Civil Code still follows the approach of the fictitious doctrine, which has been followed in essence by the socialist Civil Codes. With the current Civil Code fully adopting the doctrine, the continuation of the fictitious “juridical person” shows a private law tradition of the Russians.

4.2. The Chinese Approach: A Long Legislative History Preceded The 2021 Civil Code

For the analysis of Soviet and Russian approaches, we mostly examined their Civil Codes. However, it was not until 2021 that the People’s Republic of China (PRC) adopted its first Civil Code (民法典, Mínfǎ diǎn, Dân Pháp Điển), also the first Code, since the founding of the PRC in 1949. Their civil law tradition, in particular the regulations and awareness of the central concept of this article, dates back to before that symbolic Code. Therefore, to get a full picture of how the PRC approaches the concept, the analysis will not be limited to the current Civil Code, but to their whole legislative history.

After the communists gained power in mainland China in 1949, all the laws previously adopted were abolished. “Juridical person”, a concept that appeared in the land of China for the first time through the 1929 Civil Code of the Republic of China, survived the elimination. It formally appeared in the PRC’s 1950 Temporary Measures Concerning the Conclusion of Contracts Between State Organs, State Enterprises, and Cooperatives. Article 5 of the Measures provided: "A contract or deed must be concluded between juridical persons represented by their responsible persons". However, no available explanation was provided, making the concept ambiguous. Furthermore, there is no evidence to suggest the continuous use of this term, which was attacked as a bourgeois legal concept, by Chinese authorities in the coming years until the 1980s [11] despite some drafts of Civil Codes being introduced.

In the years before 2021, the PRC attempted to pass a Civil Code four times, but without success. The first time was in 1956 when Premier Zhou Enlai announced the first draft of the PRC’s new Civil Code. The drafting was conducted during a period of PRC under the dominance of Soviet legal scholarship, with Party officials and scholars receiving intense Soviet law training, the presence of Soviet experts, and the translations of Soviet legal texts for reference. Therefore, this first draft is modeled on the 1923 RSFSR Civil Code [28], but there is no usage of “juridical persons” in the Chinese draft like that of the Russian [11]. The project was canceled due to a political upheaval [29] of the “anti-rightist campaign” (反右運動, Fǎnyòu Yùndòng, Phản hữu vận động – Phong trào chống cánh hữu) and “Great Leap Forward” (大跃进, Dà Yuèjìn, Đại dược tiến – Đại nhảy vọt). It was also a period of delegitimizing the law and the legal culture [30].

The second opportunity for a Civil Code was opened again in 1964 when a short draft of a Civil Code was made public. Due to disagreements between the PRC and the Soviet Union from the beginning of the 1960s, this Civil Code rejected the Soviet model, indicating the end of Soviet legal dominance in China long before the collapse of the Soviet Union [31]. The draft is a remarkably interesting and historical phenomenon in the civil law tradition since the drafters try to make use of very simplified language readable by any layman [28]. The recourse to simplicity has been popular in the

socialist legal culture, with the Civil code of the German Democratic Republic (East Germany) also called for the use of nontechnical terms comprehensible to the layman (such as "Anderen" - Others instead of "Dritten" - Third parties, "Betrieb" - Business instead of "Unternehmen" - Company) [30]. However, with a radical spirit of "anti-imperial" and "anti-revision", this draft of the Chinese Civil Code reached the status of legal nihilism [28]. All legal terms were lost, "natural persons" (自然人, Zìránrén, Tự nhiên nhân) and "juridical persons" (法人, Fărén, Pháp nhân) were gone, replaced by "individuals" (个人, Gèrén, Cá nhân) and "units" (单位, Dānwèi, Đơn vị) instead. This interesting draft was abandoned with the comings of the Socialist Education Movement (社会主义教育运动, Shèhuì Zhǔyì Jiàoyù Yùndòng, Xã hội Chủ nghĩa Giáo dục Vận động) and the Cultural Revolution (文化大革命 Wénhuà Dàgémìng, Văn hoá Đại cách mạng). With the failures of both drafts, the scholars argued that the final reason was the planned economy based on the administrative distribution of goods, and there was no demand for a Civil Code [29]. The concept of "juridical persons" was still not in use.

After the reform and openness in the 1970s, the PRC restarted its legal construction. During this time, Chinese lawyers who were aware of the importance of "juridical persons" began to advocate for the establishment of this concept [11]. They cited the usage of "juridical persons" in the Soviet civil law to reinforce their advocacies, easing the worry of its Western origin. However, it was not until the early 1980s that the authorities began considering the embrace of the concept. Earlier, the term was not yet familiar to the legislators, and they still preferred using "units" and other simple terms. Both the 1982 Constitution and the 1982 Civil Procedure Law employed other terms to describe various entities, even though many of these entities would have qualified as "juridical persons". Then, due to the political drive to speed up economic reforms, the Chinese leadership saw that the concept of "juridical persons" could be used to promote the autonomy of state enterprises, which they expected would increase their efficiency [11]. With the promulgation of the 1986 General Principles of Civil Law (民法通则, Mínfǎ tōngzé, Dân pháp thông tắc), the concept officially appeared in the Chinese civil law system. While the law was a success for the advocates, it was actually a "short codification", a temporary replacement for the third failed Civil Code project in 1982 [29].

Article 36 of the 1986 General Principles defined a "juridical person" as "an organization that has capacity for civil rights and capacity for civil conduct and independently enjoys civil rights and assumes civil obligations in accordance with the law". The capacity, which will be limited by the objectives of "juridical persons" [32], shall begin when the juridical person is established and shall end when the legal person terminates. The juridical person shall be established by the approval and registration of the state (Articles 41 and 50). The Chinese approach is basically similar to the Soviet one, with a clear fictitious doctrine [33]. It was understandable since the early advocates of "juridical person" were inspired by the Soviet Civil law, and they approached the concept in a way similar to their Soviet counterparts [11]. It was, however, the last reconciliation with the Soviet legal standard [30]. Unlike the Soviets, the Chinese listed the qualifications of a juridical person. Furthermore, while this Chinese law to a great extent, was dedicated to the regulation of state enterprises like the Soviet code, it had a broader application to collective enterprises, foreign investment enterprises (Article 41), and private enterprises (Article 9 PRC Provisional Regulations Concerning Private Enterprises of 1988). This broad application, especially to private enterprises, did not happen at that time in the Soviet Union. We can conclude that the Chinese legislators finally departed from the Soviet model but were still somewhat influenced by the same political-driven legislative spirit and the fictitious approach of their Soviet peers.

Those remnants of a Soviet-like law were abandoned in the 2021 Civil Code of PRC [29]. After a 20-year effort with another failure in 2002 and gradual codification since that year, the Civil Code was promulgated at last with more influence from Western European private law [34], which has started since the end of the 1990s [31]. Not all articles indicated that changes, for example, the definition of "juridical persons" (Article 57) in the Civil Code is a verbatim adoption of the definition in the 1986 General Principles. The qualifications of a juridical person are still there (Article 58), even if the code does not literally state that these are the qualifications. The way this Code regulates the "juridical person", including its capacity, is the same as the General Principles, with some technical changes and much more detailed (53 articles compared with 18 articles). Their approach, in our opinion, still reflects the fictitious doctrine. This is also the dominant view of the Chinese authorities and lawyers [33].

In short, the Chinese approach went from a total rejection of the concept to its current broad adoption. Compared to the Russians, the Chinese were faster in embracing the independent, private "juridical person" in the Western-originated theories, starting about 10 years earlier. Like the Russians and the Soviets before them, the Chinese legal system approaches the concept from fictitious viewpoints, as they called the "juridical person" as a "legal fiction" (法律拟制, Fǎlǜ nǐ zhì, Pháp luật nghĩ chế).

4.3. The Vietnamese Approach: Two Ordinances, Three Civil Codes

Due to the war in Vietnam, there are not many laws to analyze for the period between the country's independence and 1986 - the year marking the start of "Đổi Mới" policy [35]. This policy, however, shifted the economy of the country from command/planned to mixed-market principles, prompting the state to draft laws that regulated commercial transactions. Legislators started searching for references beyond Vietnam's borders, a practice that has continued until today.

"Juridical persons", a foreign concept, was among the borrowing ideas that arrived in Vietnam through the earliest post-Đổi Mới legal documents. In two consecutive Ordinances on contracts, the 1989 Ordinance on Economic Contracts and the 1991 Ordinance on Civil Contracts, the concept was utilized. In the Ordinance on Economic Contracts, Article 2 stipulated that economic contracts can be signed between juridical persons, or between a juridical person and a natural person who registered in accordance with the law to do business. Apart from six simple articles mentioning the concept, the ordinance did not provide any explanation of the concept. This 1989 Ordinance is similar to the PRC Economic Contract Law, a law adopted in 1981 by PRC legislators [11]. This law was also the first time PRC authority formally employed the concept of "juridical persons", also without any explanation. It will have been replaced by a proper regulation of "juridical person" in the PRC 1986 General Principles of Civil Law, as presented in section 4.2 of this article.

The explanation soon appeared in the 1991 Ordinance on Civil Contracts, which defined "Juridical persons" as "an organization satisfied the following conditions: a) having separate properties and independently bear civil liability by its properties; b) independently entering civil relations, including appearing before the court as a claimant or a respondent; c) being established in accordance with the law and legally recognized as an independent organization" (Article 4). This way of listing qualifications for "juridical persons" is likely a reference to the PRC 1986 General Principles of Civil Law, since the Soviets did not have this way of regulations. A Western scholar who interviewed the then-Vietnamese adviser to the Minister of Justice and the then Director of the International Department in the Vietnamese National Assembly also came to the conclusion that the early post - Đổi mới legal documents were profoundly influenced by the Chinese laws [35]. This ordinance, therefore, approached the concept of "juridical persons" from the fictitious viewpoint just like the Chinese counterpart, with "Juridical person"

requiring the satisfaction of some state-listed characteristics, especially legal recognition.

After the two mentioned Ordinances, Vietnam started adopting the Civil Codes instead, with three Civil Codes adopted in 1995, 2005, and 2015, respectively. The first Civil Code was mostly influenced by the Soviet Civil Code, with some minor borrowings from the colonial Annamite, South Vietnamese, Chinese, French, and Japanese Civil Codes [35]. The French and Japanese influences gradually increased with the presence of the French and Japanese legal consultants through the two mechanisms: the Vietnamese French Legal House (1993-2012) [36] and the Japan International Cooperation Agency (operating) [35]. Despite the fluctuating foreign influences, the way Vietnamese Civil Codes approach the concept of "juridical person" is quite consistent.

Three Civil Codes of Vietnam (Article 94 of the 2015 Civil Code, Article 84 of the 2015 Civil Code, Article 74.1 of the 2015 Civil Code) state that:

"An organization shall be recognized as a juridical person if it satisfies the following conditions:

Established (according to the regulations of this Civil Code and other relevant laws - added since 2015), (permitted for its establishment, registration, or recognition by the state agency in charge - this clause was removed in 2005).

Having a (strictly organized - this clause was removed in 2015) structure (stipulated by Article 83 of this Civil Code - added in 2015).

Having independent properties and independently bearing civil liability by its properties.

Independently entering civil relations, including appearing before the court as a claimant or a respondent".

There are two observations from this regulation. First, the Vietnamese legislators no longer stipulated the concept in the form of a definition, starting with "Juridical person is an organization...". Three Civil Codes dealt with the concept of recognizing an organization as a juridical person if it satisfies some conditions. In our opinion, Vietnamese lawmakers slightly departed from the traditional ways of regulating the concept embraced by the Soviets, the Russians, the Chinese, and even themselves in the 1991 Ordinance on Civil Contracts, even if the conditions are the same as before. The latest Vietnamese textbook on Civil Law also indicated this departure, saying that the Article is actually about the signs to differentiate "juridical person" from other legal entities [8]. We agree with the authors of the textbook that the article does not have a definition.

Second, the three Civil Codes of Vietnam follow the same legislative technique. The regulations consistently stressed the role of the state in the establishment of "juridical person", either directly in the 1995 version or indirectly in the later versions. While "(legally) established (according to the regulations of this Civil Code and other relevant laws)" does not include a word about the State, the State indirectly decides the establishment of "juridical person" through the law it promulgates. The entire article is about the qualifications of an organization to be recognized as "juridical person".

Shall the Vietnamese approach be deemed a fictitious or real doctrine? It is debatable to conclude this approach reflects one doctrine and not the others. In our opinion, this approach is fictitious since it requires recognition from the system of governance, though indirectly, it requires the characteristics of having a legal personality in the forms of listed conditions. However, the approach shows signs of influence by the real doctrine, with the unique legislative technique of Vietnamese legislators in three Civil Codes, compared to other approaches presented in this article. It is presumable that this complex approach has been due to the influences of the French or Japanese civil tradition [6], whose Civil Codes have no definition of "juridical person" and totally follow the real personality doctrine. This singularity, while showing that the Vietnamese legislators considered both doctrines, does not set the Vietnamese approach free from the viewpoint of

the fictitious doctrine, which has been the dominant one in Vietnam for a long time [8].

5. Conclusion

By applying the personality doctrines of “juridical persons” to the concepts in the Soviet, Russian, Chinese, and Vietnamese civil regulations, this article unraveled a progression. “Juridical persons” first reached the Soviet Union, whose legislators combined the Western fictitious doctrine with the communist ideology to fit the situation in their society. When the Soviet socialist legal system reached its height with the 1964 RSFSR Civil Code, total state ownership, and the exclusion of private corporations, the Soviet scholars produced their own theories but did not depart from the fictitious viewpoint. The socialist variations were quickly reversed by the Russians after the collapse of the Soviet Union, who only retained the fictitious doctrine, not the ideology, from their predecessor. The Soviet legal tradition to some degree, influenced how the other two socialist countries regulated the concept. Despite being inspired by the Soviet political drive and fictitious viewpoint, Soviet legal dominance was rejected in the PRC since the 1960s. The Chinese went from legal nihilism to the total embrace of fictitious doctrine, with differences from the Russian regulation. In Vietnamese civil law, while being more heavily influenced by the Soviets in general, the way their legislators initially regulated the concept of “juridical person” particularly follows that of the Chinese counterpart. The latter Vietnamese regulations indicated a complicated combination between the two doctrines (fictitious and real), with references to the French and Japanese civil law traditions introducing features of real personality into the country.

References

[1] Salomon v A Salomon & Co Ltd [1896] UKHL 1, 1897, AC 22.

[2] The German Civil Code (Bürgerliches Gesetzbuch - BGB) and the French Civil Code (Code Civil Des Français - Code Napoléon).

[3] R. David, J. E. C. Brierley, Major Legal Systems in the World Today, 3rd ed., Stevens & Sons, 1985.

[4] Ho Chi Minh City University of Law, Textbook - Fundamental Regulations of Civil Law, Hong Duc Publishing House, 2022 (in Vietnamese).

[5] Hanoi Law University, Textbook - Vietnamese Civil Law, People’s Police Publishing House, 2019 (in Vietnamese).

[6] N. H. Cuong, Commentary on the Regulations on Juridical Person in the Civil Code (Amendment), Journal of Democracy and Law, 2015 (in Vietnamese).

[7] N. H. Cuong, Criminal Liability of Juridical Persons: Overview from Criminal Law, Administrative Law, Civil Law and Commercial Law), Journal of Legislative Studies, No.18, 2016, pp. 9-18 (in Vietnamese).

[8] University of Law, Vietnam National University Hanoi, Textbook on Civil Law 1, VNU Publishing House, 2023 (in Vietnamese).

[9] V. A. Kurki, A Theory of Legal Personhood, Oxford University Press, 2019.

[10] V. Gsovski, Soviet Civil Law: Private Rights and Their Background under the Soviet Regime Comparative Survey, Special Topics Chapter 11, Part II, Vol. 1, Michigan Legal Studies Series, 1948.

[11] T. Fu, The Law and Policy of State Enterprises in Post-Mao China, PhD thesis, SOAS University of London, 1992.

[12] E. A. Q. Adriano, The Natural Person, Legal Entity or Juridical Person and Juridical Personality, Penn State Journal of Law & International Affairs, Vol.4, Issue 1, 2015, pp. 365-391.

[13] F. C. von Savigny, System Des Heutigen Römischen Rechts (System of the Modern Roman Law), William Holloway, Vol. I, 1840.

[14] M. Reimann, Nineteenth Century German Legal Science, Boston College Law Review, Vol. 31, Issue 4, No. 4, Article 2, 1990, pp. 842-897.

[15] F. C. von Savigny, System Des Heutigen Römischen Rechts (System of the Modern Roman Law), Volume II, London: Wildly, 1840.

[16] W. Bernhard, Lehrbuch Des Pandektenrechts (Textbook of Pandect Law), Düsseldorf, 1867.

[17] G. Máynez, Introducción al Estudio Del Derecho (Introduction to the Study of Law), 39th ed., Porrúa.

[18] R. von Jhering, Geist Des Römischen Rechts Auf Den Verschiedenen Stufen Seiner Entwicklung

(Spirit of Roman Law at the Different Stages of its Development), Breitkopf und Härtel, 1852.

[19] G. Beseler, Volksrecht Und Juristenrecht (Public law and legal law), Weidmann, 1843.

[20] O. von Gierke, Die Genossenschaftstheorie Und Die Deutsche Rechtsprechung (The cooperative theory and German jurisprudence), Weidmann, 1885.

[21] H. Kelsen, General Theory of Law and State, Routledge, 2017.

[22] A. Ostroukh, Russian Society and Its Civil Codes: A Long Way to Civilian Civil Law, Journal of Civil Law Studies, No. 6, 2013, pp. 373-400.

[23] V. Gsovski, Soviet Civil Law: Private Rights and Their Background under the Soviet Regime Comparative Survey, General Survey Chapter 1, Part I, Volume 1, Michigan Legal Studies Series, 1948.

[24] Heinrich Freund, L'avenir du droit civil dans, l'Union Soviétique (The future of civil law in the Soviet Union), Introduction À L'étude Du Droit Comparé (Introduction to the Study of Comparative Law), Recueil Sirey, Paris, 1938.

[25] O. S. Ioffe, Development of Civil Law Thinking in the USSR, Giuffrè, 1989.

[26] Venediktov, The Right of Governmental Socialist Ownership, Chapter 1 Problems of Soviet Civil Law, 1945.

[27] Basic Theories of a Legal Entity. https://schollufsin.ru/en/sovety/osnovnye-teorii-yuridicheskogo-lica-osnovnye-teorii-sushchnosti-yuridicheskogo-lica-teoriya-yuridicheskih-lic/ (accessed on: October 10th, 2023).

[28] G. Yuan, '64年，5次民法典起草，几代民法人的求索史都在这里 (In 64 Years, the Civil Code Was Drafted 5 Times, and the History of Several Generations of Civil Legal Persons Is Here), Weixin.

[29] H. Li, 中国民法典の編纂と論争 (Compilation and Controversy of China's Civil Code) Shimane Prefectural University Research Activities and Comprehensive Policy Studies Association Committee, No. 38, 2019, pp. 93-112.

[30] G. Ajani, Chinese Civil Law and Soviet Influences, The Making of the Chinese Civil Code, 2023, pp. 292-307.

[31] K. B. Pißler, Socialist Law, Max-EuP 2012. https://max-eup2012.mpipriv.de/index.php/Socialist_Law (accessed on: October 10th, 2023).

[32] The Regulations Concerning the Administration of Registration of Legal Persons, Promulgated by the PRC State Council in 1988.

[33] T. Fu, Legal Person in China: Essence and Limits, The American Journal of Comparative Law, No. 41, 1993, pp. 271.

[34] K. B. Pißler, Chinese Law, Influence of European Private Law, Max-EuP 2012. Chinese Law, Influence of European Private Law - Max-EuP 2012 (mpipriv.de) (accessed on: October 10th, 2023).

[35] J. Gillespie, Transplanting Commercial Law Reform: Developing a 'Rule of Law' in Vietnam, Routledge, 2006.

[36] Vietnamese French Legal House, Conference on Amendment in the Civil Code, 2002 (in Vietnamese).