

**HO CHI MINH NATIONAL ACADEMY OF POLITICS**

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**THEORETICAL AND PRACTICAL BASIS  
FOR SUPERVISING THE SETTLEMENT OF  
BUSINESS AND COMMERCIAL CASES ON  
CREDIT CONTRACT DISPUTES ACCORDING  
TO THE CASSATION PROCEDURE OF THE  
PEOPLE'S PROCURACY IN VIETNAM**

**SUMMARY OF THE DOCTORAL THESIS  
MAJOR: THEORY AND HISTORY OF STATE LAW  
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**Supervisor: Dr. Duong Thi Tuoi**



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## INTRODUCTION

### **1. The necessity of the thesis**

In the period from 2017 until 2023, the situation of violations and disputes over credit contracts in the field of business and commerce has occurred more and more, generally following the trend of each year being higher than the previous year, accounting for a high proportion in the structure of business and commercial cases; with the nature, the level of increasing diversity and complexity, occurring on a large scale not only domestically but also with foreign elements, the value of disputed assets is large, negatively affecting production and business activities; the health and safety of credit activities and more broadly, the development of our country's economy. In performing its functions, tasks, powers, and supervising judicial activities, the People's Procuracy at all levels has also closely supervised and ensured that the Court's settlement of business and commercial cases regarding credit contract disputes under the cassation procedure complies with legal provisions; protecting the legitimate rights and interests of the litigants and the interests of the State. However, the handling of this type of case still has many violations and shortcomings, and the People's Procuracy at all levels has not promptly detected them to exercise the right to request, recommend, and appeal to remedy the above situation right from the initial stages of the proceedings, leading to the number of judgments and decisions with legal effect of the lower-level Court being protested under the cassation procedure and being annulled or amended by the Trial Panel of the higher-level Court according to the cassation procedure accounting for the highest proportion of judgments and commercial business decisions being annulled or amended, some cases have even been cancelled or amended many times, prolonging the settlement time for many years, affecting the quality and reputation of the prosecuting agency, seriously affecting the legitimate rights and interests of the parties, the interests of the State, especially in the context of increasing bad debt, threatening the safety of the credit system.

From the above analysis, the PhD candidate chose the topic: *“Theoretical and practical basis for supervising the settlement of business and commercial cases on credit contract disputes according to the cassation procedure of the People's Procuracy in Vietnam”* to meet urgent requirements, ensure improving the quality of supervision of the settlement of commercial business cases on credit contract disputes under the cassation procedure, to overcome the above situation, contributing to promoting the development of the country's economy.

## **2. Purpose and research task of the thesis**

### ***2.1. Research purposes***

The purpose of the thesis is to analyse and clarify the theoretical basis and evaluate the practice of supervising the settlement of commercial business cases on credit contract disputes under the cassation procedure of the People's Procuracy in Vietnam, thereby proposing viewpoints and solutions to ensure the supervision of the settlement of commercial business cases on credit contract disputes under the cassation procedure of the People's Procuracy in Vietnam, to meet the requirements of judicial reform, contribute to ensuring safer and more effective credit activities, and

### ***2.2. Research task***

- Overview of the domestic and foreign research situation related to the thesis topic, identifying the contents that can be inherited and the issues that need to be further researched in the thesis.=

- Analyzing theoretical issues of supervising the settlement of commercial business cases on credit contract disputes according to the cassation procedure of the People's Procuracy.

- Analyzing and evaluating the factors affecting the current situation of supervising the settlement of commercial business cases on credit contract disputes according to the cassation procedure of the People's Procuracy in Vietnam, such as pointing out the achieved results, limitations, obstacles and causes.

- Based on the theoretical and practical issues analyzed, identify viewpoints and propose solutions to ensure supervision of the settlement of commercial business cases on credit contract disputes according to the cassation procedure of the People's Procuracy in Vietnam in the coming time.

## **3. Research subject and research scope of the thesis**

### ***3.1. Research subject***

The research object of the thesis is the theoretical and practical issues of supervising the settlement of commercial business cases on credit contract disputes under the cassation procedure of the People's Procuracy in Vietnam.

### ***3.2. Research scope***

- *Regarding the content:* The activities of the Supreme People's Procuracy and the High People's Procuracy from the time the People's Court, the People's Procuracy has the authority to accept the petition, the document requesting review according to the cassation procedure for the judgment, the decision that has come into legal effect to resolve the commercial business case regarding the credit contract dispute until the

notice of no appeal for cassation or the People's Court, the People's Procuracy has the authority to decide to appeal for cassation to bring the case to cassation trial and issue a cassation decision to resolve the commercial business case regarding the credit contract dispute without being requested or petitioned.

- *About time:* Information and evidence data from 2017 - 2023.

- *About space:* The territory of Vietnam.

#### **4. Theoretical basis and research methodology**

##### ***4.1. Theoretical basis***

The research results of the thesis are carried out based on the theoretical foundation of Marxism-Leninism and Ho Chi Minh's ideology and the viewpoints of the Communist Party of Vietnam on the state and law.

The thesis is based on the dialectical materialist and historical materialist research methods of Marxism-Leninism on the state and law.

##### ***4.2. Research methodology***

The thesis combines research methods such as analysis and synthesis; statistical method; comparison; historical method; survey; expert interview method and systematic approach. The methods used are to clarify the content of the thesis, ensuring the scientific and logical nature between the issues in the chapters, sections, and subsections. Due to the different nature and content of each chapter and section, the thesis has used one or a combination of many research methods.

#### **5. New points of the thesis**

- In theory: The thesis has clarified the theoretical basis for the supervision of the settlement of commercial business cases on commercial business disputes under the cassation procedure of the People's Procuracy in Vietnam in particular and the supervision of judicial activities in general.

- In practice: The thesis has analyzed and evaluated the influencing factors and the achieved results, limitations and causes of the results, limitations in the supervision of the settlement of commercial business cases on commercial business disputes under the cassation procedure of the People's Procuracy in Vietnam in recent times.

Simultaneously, the thesis has pointed out viewpoints and proposed a system of comprehensive solutions to ensure supervision of the settlement of commercial business cases on commercial business disputes according to the cassation procedure of the People's Procuracy in Vietnam in the coming time, thereby contributing to improving the efficiency of loan use, risk prevention and management, ensuring the safety of the credit system, contributing to promoting the country's economic development.

## **6. Theoretical and practical significance**

### ***6.1. Theoretical significance***

The thesis contributes to clarifying the scientific theoretical basis on the supervision of compliance with the law in resolving credit contract disputes under the review procedure of the People's Procuracy in particular and in the supervision of judicial activities in general, serving in theoretical research and in-depth teaching.

### ***6.2. Practical significance***

The thesis is valuable as a reference document for state agencies, organizations, and research units, teaching the state and law. Simultaneously, the research results of the thesis contribute to improving the skills and experience of the team of prosecutors, thereby ensuring the supervision of the settlement of credit contract disputes according to the cassation procedure with grounds, following the law, and promptly; ensuring the legitimate rights and interests of the parties, improving the efficiency of loan use, ensuring safety, limiting risks when lending, using loans for credit institutions, enterprises, organizations, and individuals.

## **7. Structure of the thesis**

In addition to the Introduction, conclusion, list of published works of the author related to the thesis, list of references and 04 appendices, the content of the thesis is structured into 04 chapters and 12 sections.

## **Chapter 1 OVERVIEW OF RESEARCH RELATED TO THE THESIS TOPIC**

### **1.1. THE DOMESTIC RESEARCH SITUATION**

The PhD candidate divides domestic and foreign research works related to the thesis topic into two groups.

#### **1.1.1. Research works related to credit contracts, resolving credit contract disputes**

To serve the research process of the thesis topic, the PhD student focused on reviewing relevant projects, topics, theses, monographs, etc. In which there are some typical works in the fields of credit, secured assets, resolving credit contract disputes and property-secured contract disputes such as:

Monograph “*Law on measures to limit risks in lending activities of credit institutions in Vietnam and some countries in the world*” by Assoc. Prof. Dr. Le Thi Thu Thuy (Editor-in-Chief), Hanoi National University Publishing House in 2017; Monograph “*Resolving credit contract disputes*

*under Vietnamese law*” by Dr. Nguyen Bich Thao (Justice Publishing House in 2018). Monograph: *“Loan contracts in banking credit, theory and practical application”* by Dr Luong Khai An (National Political Publishing House, Truth in 2021)...

Some typical doctoral dissertations in law, such as the thesis *“Law on securing credit contracts employing guarantees”* by author Pham Van Dam - Academy of Social Sciences - 2017; Thesis *“Resolving Disputes over loan guarantee contracts at Credit Institutions from the Practice of Cassation and retrial of the Supreme People's Court”* by author Pham Van Loi - Academy of Social Sciences - 2020; Thesis *“Law on secured transactions with real estate at commercial banks in Vietnam”* by author Truong Thi Tuyet Minh, Ho Chi Minh City University of Law - 2022...

The above scientific works have helped the PhD candidate accumulate in-depth knowledge in the field of credit, secured assets and dispute settlement, and can also generalize theoretical issues suitable for the thesis topic, such as theoretical basis, nature of credit contracts, security contracts, types of secured assets, pointing out the concept, characteristics of credit contracts, interest rates during the term, overdue,... practices in resolving credit contract disputes at Vietnamese Courts, advantages, shortcomings, limitations, causes and solutions, lending recommendations and some countries' risk management. Thereby, finding a separate direction for the PhD candidate thesis.

### **1.1.2. Research works related to the supervision of the settlement of commercial business cases on credit contract disputes**

Some typical scientific works: Ministry-level scientific projects: *“Improving the quality of the work of supervising the settlement of business and commercial cases in the field of credit contract disputes”* in 2021 by the Supreme People's Procuracy (Department 10); Ministerial-level scientific project: *“Fighting against violations and crimes in the field of credit and banking through the practice of the right to prosecute and supervise trials of the High-level People's Procuracy - Current situation and solutions”*, 2021 by the High-level People's Procuracy in Hanoi; Proceedings of the Workshop *“Prosecution activities for the settlement of business and commercial cases in the field of credit contract disputes”* organized by the Supreme People's Procuracy and the State Bank.

Some articles with in-depth expertise were published in specialized journals or papers at national conferences addressing the contents related to the Thesis topic, such as The article *“Some difficulties and obstacles in the prosecution of the settlement of business and commercial cases on credit contract disputes”* by authors Pham Dinh Cuc, Vu Hong Cuong, the High

People's Procuracy in Ho Chi Minh City in the Procuracy Journal No. 10-2023. The article "*Some issues to note when prosecuting the settlement of credit contract dispute cases*" by author Thai Van Doan, the Procuracy Journal No. 19/2020 ...

With different approaches, research works related to the field of bank credit, credit contracts, and domestic practices in some countries worldwide. In particular, some documents have provided comments and assessments on the activities of supervising the resolution of commercial business cases concerning credit contract disputes. However, the projects, topics, and theses of the aforementioned domestic scientific works have yet to clarify the theoretical basis, functions, position, and role of the Procuracy, as well as the practice of supervising compliance with the law, to ensure that the activities of resolving commercial business cases regarding credit contract disputes according to the review procedure are timely, accurate and lawful.

## **1.2. THE RESEARCH SITUATION FOREIGN**

### **1.2.1. Scientific research works on bank credit**

Some typical scientific works foreign related to the author's thesis topic: Authors Edward K. Reed, and Edward K. Grill in the work "*Commercial Banking*"; research by Lawyer Sealy and RJA Hooley in the work "*Commercial Law -Text, Cases and Materials*" Published in 2003. Christopher L. Allen and the group of authors in the article: "*US Regulation of Bank Lending*", published in August 2015,... have conducted in-depth research on lending activities of banks, collateral, risk management methods, improving lending efficiency, handling collateral of some countries in the world, such as the US, UK... From there, the researcher consulted and drew experiences and reference values for Vietnam.

### **1.2.2. Research works on the role and position of the Procuracy (Prosecutor's Office) in various countries around the world**

The work "*On the Dual Subordination Regime and the Rule of Law*" by V. I. Lenin; The 2023 Ministry-level Scientific Project of the Supreme People's Procuracy: "*Research on Public Interest Litigation in China and the Role of the Chinese People's Procuracy in public interest litigation - Lessons learned and recommendations for the Vietnamese People's Procuracy*"; The article "*The Position and Role of the French Procuracy, the Russian Federation Procuracy and the Chinese Procuracy in Civil Proceedings*", Procuracy Magazine No. 01-2008; Research on the Position and Role of the US Prosecution Service, the Japanese Prosecution Service, the Indonesian Republic Prosecution Service in Civil Procedures, Journal



of Prosecution No. 03-2008,... A survey of some foreign research works shows that, although the name is the Procuracy or the Public Prosecution Service, each agency in countries has a different political regime, different organization and operation..., these agencies have many similar characteristics in terms of role and position in civil proceedings, in which this agency in many countries also has the authority to appeal against judgments and civil decisions of the Court that have come into legal effect due to violations of the law. The above candidate helps the PhD candidate clarify many theoretical issues about the position and role of the Procuracy/Public Prosecution Service in civil proceedings in general,...

### **1.3. The general assessment of the research situation and issues that need further clarification**

#### **1.3.1. The general assessment of the research situation**

From the overview of the research situation of domestic and foreign scientific works, graduate students can refer to and selectively inherit in the process of researching and completing the Thesis on the prosecution of resolving commercial business cases on credit contract disputes of the People's Procuracy such as analyzing theoretical and practical issues of credit contracts, guarantee contracts, on resolving credit contract disputes in the country and some countries in the world. Relevant legal provisions, settlement of credit contract disputes, guarantee contracts, achieved results, difficulties, obstacles, some solutions to improve and recommendations to amend and supplement relevant legal provisions... However, to date, there has been no systematic and comprehensive research on the theoretical basis and practice of supervising the settlement of commercial business cases on credit contract disputes under the review procedure of the People's Procuracy in Vietnam.

#### **1.3.2. Issues raised by the thesis that needs to be further clarified**

In theory, based on selective and inherited research, the thesis will study and build a system of theoretical bases on the supervision of the settlement of commercial business cases on credit contract disputes according to the cassation procedure of the People's Procuracy in Vietnam, such as building concepts, pointing out characteristics, roles... In practice, based on inheriting the research results of domestic scientific works, the thesis will update, supplement and analyze, comprehensively evaluate the current status of influencing factors and the current status of supervision of the settlement of commercial business cases on credit contract disputes according to the cassation procedure of the People's Procuracy in Vietnam today. Regarding viewpoints and solutions, based on inheriting and developing previous studies and research results in chapters 2 and 3 of the

thesis, the thesis will point out viewpoints and propose solutions to ensure supervision of the settlement of commercial business cases on credit contract disputes according to the cassation procedure of the People's Procuracy in Vietnam in the coming time.

## **1.4. RESEARCH HYPOTHESES AND RESEARCH QUESTIONS**

### **1.4.1. Research hypothesis**

Through an overview of scientific works related to the thesis topic, the scientific hypothesis is determined as follows:

In Vietnam, the People's Procuracy's supervision of the settlement of commercial business cases on credit contract disputes under the cassation procedure has achieved important results, thereby ensuring the healthy development of credit activities, and contributing to promoting the sustainable development of Vietnam's economy. However, the high rate of judgments and decisions with the legal effect of lower-level courts being annulled or amended by higher-level courts under the cassation procedure has affected the legitimate rights and interests of the litigants; meanwhile, the People's Procuracy has not promptly detected violations and shortcomings of the Court to exercise the right to request, recommend, and protest right from the first stage of the proceedings. The above situation requires comprehensive solutions to ensure supervision of the settlement of commercial business cases on credit contract disputes according to the current cassation procedure of the People's Procuracy in Vietnam.

### **1.4.2. Research questions**

The researcher identifies the research questions that need to be answered in the thesis as follows:

1. To assess the current status of the supervision of the settlement of commercial business cases on credit contract disputes under the cassation procedure of the People's Procuracy in Vietnam, what theoretical basis system should be based on?

2. What factors affect the current status of the supervision of the settlement of commercial business cases on credit contract disputes under the cassation procedure of the People's Procuracy in Vietnam? What are the achievements, limitations and causes of the results and limitations of this activity?

3. To ensure the supervision of the settlement of commercial business cases on credit contract disputes under the cassation procedure of the People's Procuracy in Vietnam in the coming time what viewpoints need to be thoroughly understood and what solutions are needed?

## **Conclusion Chapter 1**

In the socialist-oriented market economy and the context of increasingly deep international economic integration, the majority of enterprises, organizations and individuals in Vietnam of all sizes and to different degrees need to borrow credit capital to serve production and business activities, leading to disputes arising and the resolution of disputes over credit contracts in some cases still has errors and violations. Therefore, the study of theoretical and practical issues on the supervision of the resolution of commercial business cases has attracted the attention of domestic and foreign experts and scientists. Scientific research works, such as projects, ministerial-level scientific topics, theses, monographs, domestic articles, and foreign research works mainly research on credit contracts, settlement of credit contract disputes, on the position and role of the Procuracy,... Based on the overview of the research situation, the researcher has identified the contents that can be inherited, and absorbed and the issues that need to continue to focus on research and clarification in the thesis. At the same time, the research hypothesis and research questions have been developed and will be clarified in the following chapters.

## **Chapter 2**

### **THEORETICAL BASIS FOR THE PROSECUTION OF THE SETTLEMENT OF COMMERCIAL BUSINESS CASES ON CREDIT CONTRACT DISPUTES UNDER THE CASSATION PROCEDURE OF THE PEOPLE'S PROCURACY**

#### **2.1. THE CONCEPT, CHARACTERISTICS AND ROLE OF THE PROSECUTION IN RESOLVING COMMERCIAL BUSINESS CASES ON CREDIT CONTRACT DISPUTES ACCORDING TO THE CASSATION PROCEDURE OF THE PEOPLE'S PROCURACY**

##### **2.1.1. The concept of supervising the settlement of commercial business cases on credit contract disputes according to the cassation procedure of the People's Procuracy**

- The concepts of credit, credit institutions, credit contracts, credit contract disputes, business and commerce;
- The concepts and characteristics of commercial business cases on credit contract disputes;
- The concepts of supervising the settlement of commercial business cases on credit contract disputes and the concept of review in civil proceedings.

From the analysis of the above concepts, the following concepts can be drawn: *Supervising the settlement of commercial business cases on credit contract disputes under the cassation procedure is the activity of the People's Procuracy with the authority to supervise judicial activities to ensure the legality, correctness, and basis of the acts and decisions of the competent Court in the process of reviewing the judgment, the decision to settle commercial business cases on credit contract disputes with legal effect of the lower Court under the cassation procedure.*

### **2.1.2. Characteristics of the supervision of the settlement of commercial business cases on credit contract disputes under the review procedure of the People's Procuracy**

*Firstly*, the subjects of supervision of the settlement of commercial business cases on credit contract disputes under the review procedure are the High People's Procuracy and the Supreme People's Procuracy;

*Secondly*, the subjects of supervision of the settlement of commercial business cases on credit contract disputes under the review procedure are compliance with the law of the Court, the participants in the proceedings, including credit institutions, borrowers, persons with secured assets and other organizations and individuals involved in the process of accepting and settling commercial business cases on credit contract disputes under the review procedure.

*Thirdly*, the scope of supervision according to the cassation procedure: From the time the People's Court or the People's Procuracy has the authority to receive the petition, notice the request for review according to the cassation procedure for the judgment, decision on resolving the commercial business case of contract dispute that has come into legal effect of the People's Court at a lower level until the People's Court or the People's Procuracy with the authority to issue a notice of non-appeal for review to terminate the settlement of the petition, notice the request for review according to the cassation procedure; or in the case where the Chief Justice of the People's Court or the Chief Prosecutor of the People's Procuracy with the authority to issue a decision to protest according to the cassation procedure the scope of supervision is extended until the People's Court with the authority to try, issues a cassation decision to resolve the commercial business case of credit contract dispute without any complaints or petitions.

*Fourthly*, the supervision under the cassation procedure follows a special order, different from the supervision under the first instance and appeal procedures. Supervision the settlement of commercial business cases on credit contract disputes under the cassation procedure, only the

Chief Prosecutor of the People's Procuracy, the Chief Justice of the People's Court with authority has the right to protest the cassation trial and only the High-level People's Procuracy and the Supreme People's Procuracy supervises the High-level People's Court and the People's Court with authority to conduct cassation trials,...

*Fifthly*, supervision under the cassation procedure is different from supervision under the retrial procedure in civil proceedings.

### **2.1.3. The role of the prosecution in resolving commercial business cases on credit contract disputes according to the cassation procedure of the People's Procuracy**

*Firstly*, the supervision of the settlement of commercial business cases on credit contract disputes according to the cassation procedure of the People's Procuracy contributes to protecting the law, human rights, civil rights, the interests of the State, the legitimate rights and interests of lenders (credit institutions), borrowers (mostly enterprises and cooperatives), people with secured assets, people managing and using secured assets,...

*Secondly*, to resolve violations, errors, and deficiencies in the awareness and application of the law of worship and specialized law on the credit of the Court of First Instance, Appraisal, even at the level of the chief appraiser, re-appraisal at a high level.

*Thirdly*, handling a large volume of petitions, notices of appeals under the review procedure for judgments and decisions with the legal effect of lower-level People's Courts resolving commercial business cases on credit contract disputes by two methods: Decisions to appeal under the review procedure, notices of non-appeal under the review procedure with hundreds of petitions annually increasing over the years. Contributing to ensuring the resolution of relevant people and organisations' requests, questions, recommendations, and complaints.

*Fourthly*, the method for controlling the power of the judicial authority (the Court) and related individuals and organisations.

## **2.2. PRINCIPLES, CONTENTS, ORDER, PROCEDURES, AND METHODS OF SUPERVISING THE SETTLEMENT OF COMMERCIAL BUSINESS CASES ON CREDIT CONTRACT DISPUTES ACCORDING TO THE CASSATION PROCEDURE OF THE PEOPLE'S PROCURACY**

*The thesis focuses on clarifying the following 5 basic principles:*

- Principle of centralized and unified leadership in the Procuracy
- Principle of ensuring that the law is strictly and uniformly enforced
- Principle of ensuring impartiality, objectivity, and timeliness

- Principle of respecting the right to decide and the right to self-determination of the parties and the responsibility to prove belongs to the parties

- Principle of complying with regulations on protecting state secrets, secrets of the Procuracy's work.

### **2.2.2. The contents of the supervision of the settlement of commercial business cases regarding credit contract disputes under the cassation procedure**

The Supreme People's Procuracy and the High People's Procuracy shall supervise compliance with the law on procedural matters and the content of the Court's settlement:

- Supervision of procedural matters: Acceptance, settlement of petitions, notices of request for review, time limit, authority to appeal, jurisdiction to adjudicate, and rial procedures at the reviewing court.

- Supervised the content of the application of the law on the settlement of credit contract disputes by the Court during the review period regarding the principal, interest, interest in due time, interest overdue, fines for violations, settlement of secured assets and other related issues.

### **2.2.3. Procedures for supervising the settlement of commercial business cases on credit contract disputes according to the cassation procedure**

The detailed procedures are presented in 05 steps as follows:

*Step 1:* Supervise the reception, and processing of petitions, notification of requests for review, requests for transfer of case files, withdrawal of commercial business case files regarding credit contract disputes

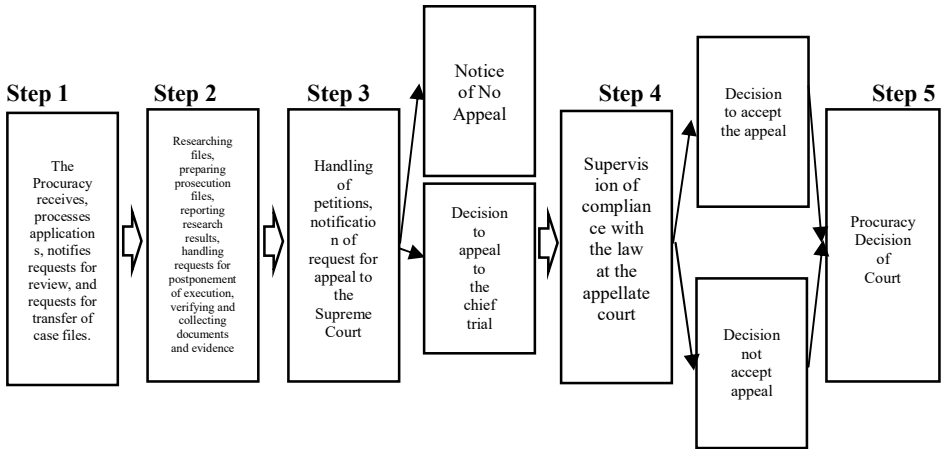
*Step 2:* Study the case files, prepare the prosecution file, report the results of the study of the file, handle requests for postponement of execution, verify and collect documents and evidence

*Step 3:* Resolve petitions, notify the request for review appeal

*Step 4:* Supervise compliance with the law at the review trial

*Step 5:* Supervise the final review decision to resolve the commercial business case regarding credit contract disputes

*Diagram 2.1. Procedure for supervising the settlement of commercial business cases on credit contract disputes according to the cassation procedure of the People's Procuracy*



**2.2.4. Method of supervision:** Direct supervision and indirect supervision

### **2.3. CONDITIONS FOR ENSURING SUPERVISION OF THE SETTLEMENT OF COMMERCIAL BUSINESS CASES ON CREDIT CONTRACT DISPUTES UNDER THE CASSATION PROCEDURE**

- Political guarantee conditions
- Legal guarantee conditions
- Economic guarantee conditions
- Organizational guarantee conditions, human resources

*Table 2.1.* Summary of the staffing situation of specialized professional units supervising the settlement of commercial business cases, labour cases and other matters according to legal regulations

<b>Number</b>	<b>Professional unit</b>	<b>Quantity</b>	<b>professional title</b>	<b>Position</b>	<b>Qualification</b>
1	Department of Supervision of the settlement of administrative cases, commercial cases, labour cases and other matters as prescribed by law (Department 10) Supreme People's Procuracy	24	01 Supreme People's Procuracy Prosecutor, 08 senior prosecutors, intermediate prosecutors	Department Heads 03 Deputy Department Heads; 04 Department Heads; 04 Deputy Department Heads	01 PhD, 14 Masters (01 PhD candidate). The rest are university
2	Procuracy for handling commercial cases, labor and other matters as prescribed by law (Institute 4) - High-level People's Procuracy in Hanoi	25	9 Senior Prosecutors; 03 Intermediate Prosecutors. The rest are primary prosecutors and specialists	Director 03 Deputy Directors; 02 Department Heads; 2 Deputy Department Heads	18 Masters 07 university
3	Procuracy for handling commercial, labour and other cases as prescribed by law (Institute 4)- High-level People's Procuracy in Da Nang	10	4 Senior Prosecutors; 1 Intermediate Prosecutor. The rest are Primary Prosecutors, Inspectors	Director 01 Deputy Director; 02 Department Heads; 02 Deputy Department Heads	06 masters. The rest are university
4	Procuracy for handling commercial,	15	06 Senior Prosecutors; 04	Director 01 Deputy Director	10 masters. The rest are university



Number	Professional unit	Quantity	professional title	Position	Qualification
	labor and other cases as prescribed by law (Institute 4) - High-level People's Procuracy in Ho Chi Minh City		Intermediate Prosecutors. The rest are Primary Prosecutors and specialists	02 Department Heads	
	<b>Total</b>	<b>54</b>	<b>01 Supreme People's Procuracy Prosecutor, 25 Senior Prosecutors. The rest are other civil servants.</b>		<b>01 PhD candidate, 48 Masters. The rest are university</b>

#### **2.4. THE POSITION OF THE PROSECUTOR'S OFFICE/PUBLIC PROSECUTOR'S OFFICE IN SOME COUNTRIES IN THE WORLD IN CIVIL PROCEEDINGS - REFERENCE VALUES FOR VIETNAM**

Research on the position of the Procuracy/Prosecution Service in some countries in the world is representative according to the following basic criteria: Countries with political regimes similar to Vietnam, typically the People's Procuracy of China, or countries that previously had a political regime similar to Vietnam, such as the Russian Federation; some countries with a continental European legal system (Civil law) such as the French Republic, previously, 80 years of Vietnam's occupation had certain influences on the organization and operation of the Vietnamese State apparatus, countries with a legal system of common law, such as the United States, and countries with a legal system based on Islamic ideology (Islamic Law), such as Indonesia. From there, we can see a panoramic picture of the position of the People's Procuracy/Prosecution Office in the world in civil proceedings in general, supervising the settlement of disputes of the People's Court according to the cassation procedure in particular and draw some reference values for Vietnam.

#### **Conclusion Chapter 2**

In this chapter, the researcher builds a system of theoretical bases for the supervision of the settlement of commercial trade disputes on credit contracts under the review procedure of the People's Procuracy, such as basic concepts related to bank credit; concepts, characteristics, role of

supervision of the settlement of commercial trade disputes on credit contracts under the review procedure; content of supervision and principles, order, and procedures for supervision of the settlement; conditions to ensure supervision of the settlement of commercial trade disputes on credit contracts under the review procedure. At the same time, the position and role of the Procuracy/Public Prosecution of some countries in the world (China, Russia, the US, France, Indonesia) in civil proceedings, thereby drawing some reference values for Vietnam in civil proceedings in general and the supervision of the settlement of commercial trade disputes on credit contracts in particular.

### **Chapter 3**

## **FACTORS AFFECTING AND THE CURRENT STATE OF SUPERVISION OF THE SETTLEMENT OF COMMERCIAL BUSINESS CASES ON CREDIT CONTRACT DISPUTES UNDER THE CASSATION PROCEDURE OF THE PEOPLE'S PROCURACY IN VIETNAM**

### **3.1. FACTORS AFFECTING THE CURRENT SITUATION OF SUPERVISING THE SETTLEMENT OF COMMERCIAL BUSINESS CASES ON CREDIT CONTRACT DISPUTES UNDER THE CASSATION PROCEDURE**

#### **3.1.1. Formation and development of law on resolving credit contract disputes under the cassation procedure**

- Law on resolving credit contract disputes before the 2015 Civil Procedure Code and the 2015 Civil Code came into effect
- Law on resolving credit contract disputes when the 2015 Civil Procedure Code and the 2015 Civil Code came into effect until now

#### **3.1.2. Specialized agencies of the Supreme People's Procuracy, the High-level People's Procuracy and the leadership, direction and operation of the leaders of the Supreme People's Procuracy, the High-level People's Procuracy**

#### **3.1.3. The relationship of coordination between the People's Procuracy, the People's Court and relevant agencies**

#### **3.1.4. The complexity of business and commercial cases on credit contract disputes in Vietnam**

#### **3.1.5. Criteria for assessing the quality of supervision of the settlement of credit contract disputes**

#### **3.1.6. General assessment of the positive and negative influences of factors on the current situation of prosecution resolving credit contract disputes under the cassation procedure**

### 3.2. THE CURRENT STATUS OF SUPERVISION OF THE SETTLEMENT OF COMMERCIAL BUSINESS CASES ON CREDIT CONTRACT DISPUTES UNDER THE CASSATION PROCEDURE

**3.2.1. The results of the inspection of the settlement of commercial business cases on credit contract disputes under the review procedure and the reasons**

#### *3.2.1.1. The results achieved*

*Firstly*, the situation of accepting and resolving cases under the cassation procedure at the Supreme People's Court has achieved certain results. The number of cassation decisions of the Supreme People's Court's Judicial Council resolving commercial cases on disputes over the cancellation of judgments and legal decisions of lower-level courts in the 7 years from 2017 to 2023 out of the total number of cassation decisions resolving commercial cases in general is as follows:

*Table 3.1: Summary of the acceptance status, the results of the inspection of the decisions of the chief judge at the Supreme People's Court from 2017-2023*

<b>Year</b>	<b>Final decision on commercial business case</b>	<b>Decision on the final review of the commercial case regarding the credit contract dispute</b>	<b>Proportion</b>
2017	28	13	46%
2018	13	05	38%
2019	12	06	50%
2020	22	07	32%
2021	22	05	55%
2022	19	07	37%
2023	06	02	33%
<b>Total</b>	<b>122</b>	<b>45</b>	<b>37%</b>

Looking at the above statistics table, it can be seen that the number of final judgments resolving this type of case accounts for a high proportion of the total number of commercial cases, (including disputes over contracts for the sale of goods, disputes over construction contracts, disputes over company members, etc. with profit purposes at the Supreme People's Court), the highest rate was in 2019, up to 50% (6/12), and the number of final judgments resolving this type of case by year was highest in 2017 with the number of 13 decisions. Synthesizing the Supreme People's Court's final judgments in 07 years (from 2017 to 2023), it is found that the number of judgments and decisions with legal effect on commercial

contract disputes of lower-level People's Courts that were overturned by the Supreme People's Court's final judgment level accounts for a significant proportion of the number of commercial contract cases that were overturned, with an average of: 37% (45/122), the number of final judgments on commercial contract disputes at the same level each year from 2018-2022 (05-07 decisions per year), in 2023, the number has decreased, but compared to the rate of final judgments this year, it has not decreased (2/6).

*Secondly, the situation of acceptance, the results of the inspection of the settlement at the High People's Procuracy*

*At the High People's Procuracy in Hanoi*

From 2017 to 2023, the Hanoi High People's Procuracy accepted and retried 148 cases (mainly under the cassation procedure, of which, the Chief Prosecutor of the Hanoi High People's Procuracy protested 31 cases). The court brought 90 cases to trial. The results accepted 81 cases for cassation and did not accept 09 cases.

The Hanoi High People's Procuracy accepted and resolved 580 petitions/503 cases, issued a document requesting the court to transfer the files for consideration and settlement according to its authority and received 193 files. Resolved 153 files, of which 31 cases were issued for cassation and retrial; 122 cases were not protested.

*At the High People's Procuracy in Da Nang*

The High-level People's Procuracy in Da Nang accepted the prosecution and trial of 79 cases under the supervisory and retrial procedures (mainly under the supervisory and retrial procedures), and resolved:

The court accepted the appeal and annulled and amended the first-instance and appellate judgments: 67 cases (accounting for 84.82%).

The court did not accept the appeal and upheld the effective judgment: 06 cases (accounting for 7.59%).

The court suspended the final judgment and retrial: 06 cases (accounting for 7.59%).

*At the High People's Procuracy in Ho Chi Minh City*

The High People's Procuracy in Ho Chi Minh City appealed for review of 94 cases and the Chief Justice of the High People's Court in Ho Chi Minh City appealed 72 commercial arbitration cases on disputes over credit contracts. A total of 166 appeals (Table 3.2).

*Table 3.2: Situation of acceptance and results of prosecution of settlement at the High People's Procuracy in Ho Chi Minh City (2017-2023)*

<b>Year</b>	<b>The Procuracy appealed</b>	<b>Court of Appeal</b>	<b>Total</b>
2017	6	14	20
2018	21	8	29
2019	13	11	24
2020	19	9	28
2021	17	17	34
2022	18	13	31
2023	04	00	04
<b>Total</b>	<b>98</b>	<b>72</b>	<b>170</b>

Regarding the quality of appeals for review by the High-level People's Procuracy and the Supreme People's Procuracy for business and commercial cases on disputes over credit contracts, has been improved, the number of appeals brought to trial and accepted by the Board of Appeals has reached a high rate. Several appeals for review by the Chief Prosecutor of the High-level People's Procuracy and the Chief Prosecutor of the Supreme People's Procuracy have been accepted by the Board of Appeals;...

#### ***3.1.1.1. The reasons for the results achieved***

*Firstly*, the close and resolute leadership and direction of the Supreme People's Procuracy and the senior People's Procuracy leaders, with the spirit, and determination to not be lenient and not afraid of conflict, in recent years, has determined the work of supervising the settlement of commercial arbitration cases on contract disputes to be the "key, breakthrough work" of the People's Procuracy.

*Secondly*, the documents providing professional guidance, answering questions, announcing experience, training, conferences, and seminars of the Industry on supervising the settlement of commercial banking cases on credit contract disputes are increasingly numerous, which are specialized and practical, helping the team of Prosecutors and civil servants to improve their awareness, skills, and experience, to remove difficulties and obstacles, to ensure strict supervision, with grounds, following the law, and promptly handling commercial banking cases on credit contract disputes by the Court.

*Thirdly*, the sense of responsibility and determination to strive to fulfil the tasks of the team of Prosecutors and civil servants working at specialized and professional units of the Supreme People's Procuracy, the High-level People's Procuracy are increasingly professionally trained, have

in-depth specialized knowledge in the field of credit, handling collateral, and accumulating a lot of experience and skills,...

*Fourthly*, the increasingly close and in-depth coordination between the High-level People's Procuracy and the High-level People's Court, between the Supreme People's Procuracy and the Supreme People's Court and relevant agencies helps to quickly resolve, unify viewpoints, and resolve complicated cases in the process of resolving commercial business cases on disputes over credit contracts according to the cassation procedure.

### **3.2.2. The limitations in the supervision of the settlement of commercial business cases on credit contract disputes under the cassation procedure and the reasons**

#### **3.2.2.1. The limitations**

*The first is*, there are still many judgments and decisions resolving commercial cases on disputes over credit contracts that have legal effects on the Court that violate the law but the Procuracy has not yet been detected.

*Firstly*, the inspection process has not discovered that the Court's review and on-site appraisal were not complete and timely and that the participants in the proceedings were omitted.

*Secondly*, the inspection process has not discovered that the Court has omitted the wife or husband participating in the proceedings in cases where the secured property is the land use right in the name of one person during the marriage period.

*Thirdly*, the inspection process has not discovered that the case has signs of a criminal offence, and must wait for the results of the investigation agency's settlement.

*Fourthly*, the inspection process has not discovered that the judgment or decision with legal effect declaring the acceptance of the penalty for the violation was incorrect.

*Fifthly*, the inspection process has not discovered that the judgment or decision with legal effect resolving the business and trade case on the dispute over the credit contract determined the third party to be bona fide incorrect.

*Sixthly*, the inspection process has not discovered a judgment or a legally effective decision resolving a commercial case on a dispute over a credit contract declaring the mortgage contract invalid which is incorrect.

*Seventhly*, the inspection process has not discovered a judgment or a legally effective decision resolving a commercial case on a dispute over a credit contract declaring that the loan exceeds the scope of collateral.

*The second is, there are still some appeals for review by the Procuracy that are not accepted by the Court because the quality of the appeals is not guaranteed.*

*The third is, the appeals of the Chief Justice of the Supreme People's Procuracy are not many, not commensurate with the appeals of the Chief Justice of the Supreme People's Court and the supervision of the appeal procedures is also limited.*

*The fourth is, there are still many cases in which judgments and decisions have been annulled many times, with the settlement time being prolonged for many years, but the Procuracy has not yet taken measures to propose or appeal to remedy the violations.*

### **3.2.2.2. The causes of limitations**

#### *\* Objective causes*

The procedural law on the authority, functions, and duties of the Procuracy to supervise compliance with the law in judicial activities in general and supervising the settlement of credit contract disputes in particular still has some limitations. The law on content has many general and difficult-to-understand provisions; the issue of interest, interest rates, penalties for violations, handling of secured assets, and protection of bona fide third parties is also not unified, the provisions are interwoven with many different legal documents, such as the Civil Code, Land Law, Law on Marriage and Family, Law on Enterprises, Law on Credit Institutions, Decrees, Circulars, and guiding professional documents.

#### *\* Subjective causes*

Due to the subjective fault of the Prosecutor who did not carefully study the case file or due to limited capacity; some leaders of the Procuracy have not paid attention, and neglected management and direction. Conditions regarding facilities, techniques and the application of science, techniques, and information technology are still limited,...

## **Conclusion Chapter 3**

In Chapter 3, the PhD candidate analyzed the factors affecting the current situation of supervising the settlement of commercial disputes. On disputes over contracts under the review procedure of the High-level People's Procuracy and the Supreme People's Procuracy, such as the formation and development of the law on settling commercial disputes on disputes under the review procedure; the specialized agency of the Supreme People's Procuracy, the High-level People's Procuracy... At the same time, analyzing and evaluating the achieved results, limitations and causes of the results, and limitations in supervising the settlement of

commercial disputes on disputes over contracts under the review procedure of the High-level People's Procuracy and the Supreme People's Procuracy. This is an important practical basis for proposing solutions to ensure the supervision of the settlement of commercial disputes on disputes over contracts under the review procedure in the coming time in Chapter 4.

## **Chapter 4**

### **VIEWPOINTS AND SOLUTIONS TO ENSURE SUPERVISION OF THE SETTLEMENT OF COMMERCIAL BUSINESS CASES ON CREDIT CONTRACT DISPUTES ACCORDING TO THE CURRENT CASSATION PROCEDURE OF THE PEOPLE'S PROCURACY IN VIETNAM**

#### **4.1. VIEWPOINTS ON ENSURING SUPERVISION OF THE SETTLEMENT OF COMMERCIAL BUSINESS CASES ON CREDIT CONTRACT DISPUTES ACCORDING TO THE CASSATION PROCEDURE OF THE PEOPLE'S PROCURACY IN VIETNAM**

*Firstly*, ensure a thorough understanding of the Party and State's viewpoints and policies on the role and position of the People's Procuracy.

*Secondly*, ensures safety and efficiency, limits the occurrence of disputes in the credit sector, prevents systemic bad debt from increasing, and threatens economic security.

*Thirdly*, protect the legitimate rights and interests of the parties in resolving credit contract disputes according to the review procedure.

*Fourthly*, ensure compliance with the requirements of international economic integration.

#### **4.2. THE SOLUTIONS TO ENSURE SUPERVISION OF THE SETTLEMENT OF COMMERCIAL BUSINESS CASES ON CREDIT CONTRACT DISPUTES ACCORDING TO THE CASSATION PROCEDURE OF THE PEOPLE'S PROCURACY IN VIETNAM**

##### **4.2.1. General solutions**

*Firstly*, strengthening the leadership of the Party; the leadership and direction of the Party Committee of the Supreme People's Procuracy, the Party Committee of the High-level People's Procuracy;

*Secondly*, continue to develop, amend and supplement relevant legal documents, such as amending and supplementing the 2015 Civil Procedure Code; amending and supplementing the Law on Credit Institutions and



documents guiding its implementation; amending and supplementing the Land Law; developing and promulgating the Law on Secured Transactions;

*Thirdly*, strengthening the direction and administration of the Government in developing, promulgating and organizing the implementation of relevant legal documents;

*Fourthly*, strengthening the guidance of the Supreme People's Court and limit the appeal of the Chief Justice of the People's Court, focusing on the work of cassation trials.

#### **4.2.2. Specific solutions to ensure supervision of the settlement of commercial business cases on credit contract disputes according to the cassation procedure of the People's Procuracy in Vietnam**

*Firstly*, strengthening the coordination between the People's Procuracy and the People's Court in resolving commercial lending cases on credit contract disputes.

*Secondly*, strengthening the coordination between the People's Procuracy and relevant agencies in the process of resolving commercial lending cases on credit contract disputes.

*Thirdly*, continue to innovate and improve the quality of supervision of the resolution of commercial lending cases on credit contract disputes.

*Fourthly*, make recommendations for the credit institution system to ensure safety and efficiency when lending.

### **Conclusion Chapter 4**

Based on the identification of influencing factors and the current status of the supervision of the settlement of commercial arbitration cases on credit contract disputes under the cassation procedure of the People's Procuracy in Vietnam, in Chapter 4, the researcher pointed out the viewpoints to ensure the supervision work and proposed several solutions, such as general solutions for strengthening the leadership of the Party; perfecting procedural laws, substantive laws, especially laws on credit, collateral,... and specific solutions such as strengthening the coordination between the People's Procuracy and the People's Court and with relevant agencies; continuing to innovate and improve the quality of supervision of the settlement of commercial arbitration cases on credit contract disputes; regularly summarizing and drawing experience in the supervision of the settlement of commercial arbitration cases on credit contract disputes; recommendations for the operations of credit institutions and customers in the effective use of loans, ensuring payment obligations, and obligations to implement security measures; preventing and minimizing risks in business, handling bad debts, serving the best for economic development, contributing to making Vietnam increasingly rich and strong.

## CONCLUSION

In Vietnam today, commercial litigation cases on credit contract disputes are increasingly arising, with complex nature, the ability to recover capital of credit institutions and the handling of secured assets are facing many risks and challenges, the situation of bad debts is increasing, systematically, causing the Vietnamese economy to suffer from slow development. The supervision activities under the cassation procedure play a very important role and position, promptly detecting serious violations in judgments and decisions resolving commercial litigation cases on credit contract disputes to exercise the right to appeal for cassation and participate in court sessions, closely supervising, ensuring compliance with the law in the court's resolution activities. Accordingly, the research on the thesis topic has achieved the following results:

1. The thesis has built a system of theoretical bases on the supervision of the settlement of commercial business cases on credit contract disputes under the review procedure of the People's Procuracy, such as the concept, characteristics, role, principles, content, order, procedures and methods of supervision...

2. The thesis has identified the factors and assessed the influence of those factors on the current situation of supervision of the settlement of commercial business cases on credit contract disputes under the review procedure of the People's Procuracy in Vietnam; at the same time, it has analyzed and evaluated the achieved results, limitations and causes of the achieved results, limitations in the supervision of the settlement of commercial business cases on credit contract disputes under the review procedure of the People's Procuracy in Vietnam in the past.

3. Based on the theoretical system and analysis and assessment from the practice of prosecution, the Thesis has pointed out the viewpoints and proposed several solutions to ensure the supervision of the settlement of commercial business cases on credit contract disputes according to the cassation procedure of the People's Procuracy in Vietnam in the coming time, including general solutions and specific solutions.

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