Legal Status and Mechanisms for Safeguarding Lawyers' Rights to Practice Law in Criminal Proceedings: A Comparative Study Between the Laws of Vietnam and Japan

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ABSTRACT

Safeguarding the lawyers' legal status and rights to practice law in criminal proceedings is extremely important. This article compares the legal systems of Vietnam and Japan to clarify their legislative structures, public protection mechanisms, and practical constraints on the lawyers' practices. Japan is featured by a hybrid model blending the Civil Law and Common Law traditions. Regardless of absolute self-controlled independence under the Japan Federation of Bar Associations (JFBA), Japanese lawyers still lack the right to be present during pre-trial interrogations in the rooms. By focusing on the pre-trial stage, investigative pressures often outweigh safeguards for the defense. The findings reveal that Vietnam is making great efforts to transition toward an adversarial model and refine its legislation through the ongoing amendments to the Law on Lawyers. Supported b `1sby these findings, the study's recommendations are released for Vietnam to strengthen substantive professional independence and enhance the efficiency of its public defense frameworks.

Keywords: Legal Status, Lawyer's Right to Practice Law, Criminal Proceedings, Comparative Study, Vietnam, Japan

INTRODUCTION

Safeguarding the legal status and substantial support mechanisms for the lawyer's rights to practice law is an important criterion to evaluate the level of human rights protection in criminal proceedings. Investigative and prosecutorial agencies consistently hold a critical power advantage over the accused, particularly during the pre-trial stage. The independent participation of defense counsel aims to check state power, steering criminal proceedings toward fairness and legality. Consequently, jurisdictions worldwide continuously review and perfect their legal frameworks to narrow the gap between statutory provisions and the practical reality of legal practice.

Vietnam currently demands groundbreaking changes in perfecting the legal framework for the lawyer profession. The adversarial principle at trial and the self-representation right or the right to counsel must be substantively guaranteed to prevent incorrect convictions and miscarriages of justice. This requires a comprehensive amendment and replacement of the 2006 Law on Lawyers to expand the rights to practice law, improve independence, and remove extra-legal interferences against exculpatory activities. As a result, the transition to an adversarial model has generated a demand for the equality of arms for counsel, while raising the need to institutionalize new auxiliary models such as public defender institutions.

Japan is known as a unique hybrid judicial model, offering significant reference value for Vietnam. Japanese criminal procedure is the product of an integration between the inquisitorial system of Continental European Civil Law and the adversarial system of Anglo-American Common Law. This framework grants absolute professional self-governance and complete independence from the executive branch to JBFA. However, Japanese judicial practice indicates that conviction rates are often anchored on confessions obtained during isolated pre-trial detention phase.

LITERATURE REVIEW

Comparative analysis of the legal status of defense counsel in criminal proceedings

3.1. Constitutional foundations and organizational models of the lawyer profession

The legal status of defense counsel in Vietnam and Japan is formed by two distinct legislative philosophies regarding the scope of professional self-regulation and executive oversight. In Vietnam, the legal status of lawyers is guaranteed indirectly through the 2013 Constitution of Vietnam, defining that *"A person who is arrested, held in custody, temporarily detained, charged with a criminal offence, investigated, prosecuted or brought to trial has the right to defend himself or herself in person or choose a defense counsel or another person to defend him or her"*. The profession's organizational model is designed and developed by combining the state management by the Ministry of Justice and self-regulation by socio-professional organizations under the guidance and self-regulation framework of the Vietnam Bar Federation (Ton That Nhan Tuoc, 2023). This structure's essence is to socialize legal services while ensuring alignment with the political system and the social management objectives powered by law (Ton That Nhan Tuoc, 2023). On the other hand, Japan recognizes a direct and robust constitutional status for defense counsel. Article 34 of the 1947 Constitution of Japan provides that *"No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel"*. Japan upholds the principle of the bar's absolute independence. The Japan Federation of Bar Associations (JFBA) owns comprehensive self-regulation completely independent of the Japanese Ministry of Justice (JFBA, 2001). The JFBA is known as the highest-ranking authority in granting practicing licenses, establishing ethical standards, and disciplining members without interference or approval from any state administrative agencies (JFBA, 2001). This principle transforms the lawyer profession into a robust civil force to protect civil rights against prosecutorial pressure (JFBA, 2001).

3.2. Counsel right-related mechanisms in State-sponsored exculpatory support and early access to justice

Analyzing the institutional mechanisms providing state-sponsored defense services for vulnerable groups highlights the operational structural differences between the two countries. Currently, Vietnam is maintaining a dual mechanism. The first mechanism relates to the criminal procedural authorities, appointing counsel, under Article 76 of the 2015 Criminal Procedure Code *"In the following cases, if the accused, their representative or relatives do not invite a defense attorney, the competent authority conducting the proceedings must appoint a defense attorney for them: a) The accused or defendant in a crime for which the Penal Code prescribes the maximum penalty of 20 years in prison, life imprisonment, or death penalty; b) The accused has a physical disability that prevents him/her from defending himself/herself; has a mental disability or is under 18 years of age"*. The second mechanism is implemented through the State Legal Aid system under the Department of Justice, where legal aid officers provide free exculpatory services for the poor and policy beneficiaries. Although this model ensures social security, legal aid officers from the state-salaried legal aid officers may raise concerns regarding their substantive professional independence when they must directly litigate against prosecutorial bodies, which are part of the state apparatus (Vu Trong Giang, 2026).

With the Appointed Counsel System (Kokusen Bengo Seido), managed by the Japan Legal Support Center (JLSC), Japan works closely with the JFBA self-regulatory body. Initially, the right to court-appointed counsel was only applied to defendants following formal indictment (Ibusuki & Repeta, 2020). However through successive criminal procedural reforms, this system has been scaled down to the pre-indictment stage for all cases subject to detention warrants (Ibusuki & Repeta, 2020). This mechanism ensures that from the moment of isolation from society, suspects receive legal assistance from an independent private attorney funded by public expenditures rather than a public servant (Ibusuki & Repeta, 2020). The counsel's early participation in Japanese system creates a more effective human rights safeguard network before inculpatory dossiers are finalized by the investigators.

3.3. Status of the counsel in relation to the procedural authorities

In Vietnam, the judicial reform aims to build an adversarial judiciary wherein the prosecuting and defending bodies enjoy equal rights in gathering and presenting evidence (Training Centre for Elected Representatives, 2016). Under the legislative perspective, the lawyer's status is, however, still categorized as "procedural participants", clearly differentiated from "procedural conductors" such as investigators, prosecutors, or judges. This stratification creates psychological and practical disadvantages, preventing counsel's voice from achieving the same weight as that of public authorities at trials (Ta Quang Trung, 2022).

Although Japan is subject to heavy influence from the inquisitorial tradition of the Continental Civil Law system, the integration of American Common Law elements has improved the adversarial status of defense counsel (Abe, 1958). In trials applying the lay judge system (Saiban-in) since 2009, Japanese defense counsel hold absolute equality with prosecutors in cross-examining evidence and persuading the lay judge panel (Ibusuki & Repeta, 2020). However, this equality status exists only at the public trial stage in court. During the pre-trial investigation stage, the status of Japanese defense counsel is severely impaired by the police authorities' possession of the prerogative to isolate suspects, putting defense counsel in a reactive position and necessitating continuous legal advocacy campaigns to reform procedural law structures (Ibusuki & Repeta, 2020).

RESEARCH METHODOLOGY

This study applies a comparative legal methodology, combining legal document analysis with real-time data synthesis to clarify the gap between statutory provisions and the operational reality of the justice system.

MAIN FINDINGS - SAFEGUARDING MECHANISMS AND PRACTICAL CONSTRAINTS ON DEFENSE COUNSEL'S RIGHTS

5.1. Rights of access to detainees, suspects, and defendants

A prerequisite for defense counsel to develop an effective exculpatory strategy is the right to confidential consultations and communications with clients during the preliminary stages of a case. The right of access to the accused as a fundamental procedural principle to guarantee human rights (Tien Dung, 2026) is recognized by the applicable laws of Vietnam. However, some technical constraints are still found in practices. Serving procedural notices to defense counsel is frequently subject to procedural delays, and consultations between lawyers and suspects in detention facilities are occasionally put under the direct or indirect supervision of investigators for the reason of protecting investigative confidentiality (Tran Van An, 2026). These restrictions undermine the timeliness and efficacy of defense activities during the early stages of criminal proceedings (Tran Van An, 2026).

In Japan, constraints on client access are characterized by a deeper systemic dimension and recognized as the focal point of criticism by international observers under the "hostage justice" framework (Ibusuki & Repeta, 2020). Article 39 of the Japanese Code of Criminal Procedure grants the suspects the right to consult with counsel without the presence of prison guards. However, an exclusionary clause under Article 39(3) permits police and prosecutors to coordinate and appoint the date, time, and location of such consultations if it is deemed "necessary for investigation". The Japanese investigative authorities often invoke this provision to delay lawyer-suspect contact, engendering prolonged isolation aimed at securing confessions (Ibusuki & Repeta, 2020). It is noted that Japanese law entirely denies defense counsel the right to be present during police interrogations (Ibusuki & Repeta, 2020). In response to this reality, the Japan Federation of Bar Associations has instituted internal suspect interrogation diaries to guide clients in documenting interrogation proceedings, serving as evidence to challenge the voluntariness of statements in court (Nakamura International Criminal Defense, 2026).

5.2. Right of access to case files, documents, and evidence gathering

In Vietnam, the counsel has the right to inspect, take notes, and copy documents within the case file after the investigation is ended. However, such studies unveiled that this mechanism remains passive; lawyers frequently encounter difficulties in accessing evidence at earlier stages or face delays by the prosecution in disclosing

exculpatory materials (Phan Minh, 2026; Tran Van An, 2026). Lack of explicit regulations governing mandatory prosecutorial evidence disclosure places defense counsel at a disadvantage during courtroom advocacy (Nguyen Khac, 2026; Tran Van An, 2026).

This challenge is solved through a rigorous staged evidence disclosure mechanism, particularly following the adoption of the lay judge trial system in 2009 (Ibusuki & Repeta, 2020). Prior to the formal trial, the prosecution is obligated to disclose a specific evidence-based index to the defense, enabling both parties to jointly coordinate the trial schedule and narrow down disputed issues (JFBA, 2018). This access mechanism empowers the counsel to proactively prepare direct adversarial litigation skills before the deliberating panel (Masayuki Honda International Law Office, 2026). For evidence excluded by prosecutors from the official trial index, however, Japanese defense counsel must undergo highly complex supplementary disclosure procedures, and such access may be rejected if investigative authorities demonstrate that disclosure would compromise national security or ongoing related investigations.

5.3. Technological impacts and new professional practice risks

The advancement of digital transformation and artificial intelligence applications offers both opportunities and risks for the institutional mechanisms safeguarding the lawyer's right to practice law in both nations. Although technological application assists lawyers in optimizing case file analysis and developing legal arguments, it concurrently introduces critical challenges regarding the protection of personal privacy and case data confidentiality (An Giang Bar Association, 2026). If the digital tools are not powered by rigorous risk-control frameworks, the leakage of litigation data or breaches of professional ethics concerning client confidentiality shall emerge as novel legal constraints, impairing the operational safety of defense counsel within modern judicial environments (An Giang Bar Association, 2026).

DISCUSSIONS AND SOME RECOMMENDATIONS FOR LEGAL REFORM IN VIETNAM

6.1 Discussions

Comparative analysis of the legal systems of Vietnam and Japan reveals a complex dynamic between statutory rules and criminal justice practices. The primary convergence between the two countries is found not only in symbolic statutory provisions, but also in operational realities during the pre-trial investigation phase. In both jurisdictions, although the right to counsel is constitutionally or statutorily enshrined, investigative agencies consistently retain a structural advantage aimed at prioritizing crime detection and the pursuit of objective truth (Ibusuki & Repeta, 2020; Training Centre for Elected Representatives, 2016).

However, the origins and structural nature of these challenges are characterized by constitutional difference between the two countries. In Vietnam, the lawyers' obstacles are predominantly administrative in nature, demonstrated by the certificate-issuance mechanism and the absence of targeted sanctions for procedural authorities impeding professional operations (Phan Minh, 2026; Tran Van An, 2026). In contrast, in Japan, these constraints are featured by deeper legislative structures. Although Japanese defense counsel have an absolute self-regulatory bar organization completely independent of the executive branch (JFBA, 2001), they still experience a partial erosion of their powers due to exclusionary provisions in procedural law. That is the prosecutor's prerogative to coordinate meeting schedules and the denial of counsel presence during interrogations (Ibusuki & Repeta, 2020; Nishikawa, 2020). This proves that a Japanese-style independent self-governing model is a necessary condition to safeguard the status of the lawyer profession, yet insufficient to eliminate operational restrictions unless criminal procedure laws undergo synchronized structural reform.

6.2. Recommendations for legal reform in Vietnam

From Japan's institutional experience, the comprehensive amendment to the Law on Lawyers and the refinement of criminal adversarial mechanisms in Vietnam should concentrate on two core solution groups:

First, reforming public defense institutions and expanding early access for suspects. Vietnam should adopt the international good practices from Japan's trajectory of expanding its court-appointed counsel system by enabling public defense or legal aid organizations to intervene as early as the pre-indictment stage across all cases subject to criminal custody or detention warrants. It is also required to enhance the professional independence of legal aid officers, gradually reducing reliance on state administrative apparatuses to ensure a fair-play field with procuracy authorities.

Second, institutionalizing safeguard mechanisms and removing the "ask-give" procedures. The draft Law on Lawyers should comprehensively eliminate administrative restrictions in defense registration, replacing them with a post-audit mechanism based on lawyer credentials and office notification. The law should add more stringent sanctions against acts impeding lawyers from copying case files or unlawfully monitoring communications between counsel and clients. Moreover, establishing a structured phased evidence disclosure mechanism between prosecution and defense prior to trial under Japan's lay judge trial model is recognized as a practical solution to improve the substantive efficacy of adversarial proceedings in Vietnam.

CONCLUSIONS

Examining the Japanese legal system regarding the legal status and mechanisms of safeguarding the lawyer's right to practice law offers crucial insights as follows: The statutory advancements generate meaningful value only when it is paired with practical controls and balances on power during the preliminary investigation phase. Japan possesses a robust model of professional self-governance, completely independent of the executive branch, alongside an advanced evidence disclosure mechanism at trial. However, the institutional priorities, related to the truth pursuit and investigative discretion, continue to produce procedural blind spots, which may compromise human rights prior to public trial.

For Vietnam, the ongoing transition toward an adversarial model and the comprehensive amendment of the Law on Lawyers offers a great opportunity to re-balance judicial power. It is essential to incorporate the Japan-based lessons regarding early intervention by court-appointed counsel at the pre-indictment stage to protect vulnerable populations and enhance the quality of defense activities. Concurrently, restricting the "ask-give" administrative procedures and institutionalizing legal sanctions against interference with legal practice shall be decisive steps. In short, the extent to safeguard the defense counsel's practice rights not only serves as an instrument for protecting citizens, but also as a fundamental benchmark for a democratic, equitable, and human rights-based justice system.

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