



**CORPORATE GOVERNANCE THROUGH  
THE LENS OF FEMINIST LEGAL THEORY  
IN THE INDUSTRIAL REVOLUTION 4.0 OF VIETNAM**

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**Abstract**

Feminist legal theory is often known to voice for women’s rights in political and community activities. However, the applicability of this theory is not only applied in those realms but also effectively transferred in corporate governance, especially in the industrial revolution 4.0. The article is a study on the utilization of feminist legal theory in corporate governance when recognizing the social nature of the firms. Furthermore, the author also analyzes neutrally the gender quotas on the corporate board from the perspective of corporate governance. Based on that ground, the author recommends a feminist legal model suitable to current Vietnamese practice.

*Keywords: corporate governance, feminist legal theory, the industrial revolution 4.0, Vietnam.*

**1. Introduction**

The application of feminist theory in policy and law-making activities is not only meaningful to the public realm, but also must be developed and implemented in the private sectors as well, particularly corporate law. According to William J. Carney (1993), the efficiency model advocates that the goal of corporate law should be to ensure an environment of market efficiency to enable the corporation to achieve its goal of “maximizing shareholder profits.” This model rejects public regulation as inefficient and considers private contractual rights the desirable means of corporate control (1). This view may not realize the social nature of the corporations.

Ronnie Cohen (1993) clearly stated that the law must hold corporations accountable to the public and advance the concept that corporations should work **not only for profit but also for the social good** (1). Therefore, we should treat the corporate policy as a “contractual arrangement” (2) that represents a set of implicit and explicit contractual relationships between and among the various participants, including employees, shareholders, creditors, and managers (2). The position of women in both corporate law and corporate governance now is waned or not even specified. This context can be seen at best hollow and at worst is dangerous for women because when no race is specified, that silence codes as white; when no sex is specified, that silence codes as male (2).

So, in order to empower women’s rights and balance gender discrimination in corporate governance, applying feminist legal theory in corporate governance is an urgent job. Feminist legal theory gains have opened the doors of corporate workspaces to women (2). In addition, the industrial revolution 4.0 affecting corporate governance can be considered as a “ripe opportunity” for the lawmakers and directors to take advantage of for the establishment and development of a governance model under the lens of feminism, instead of operating a male-centered view model as it is currently.

This article shows an overview picture of theoretical and experimental feminism corporate governance in its current context. It also analyzes feminist corporate governance models in previous research done by other scholars to determine which is most suitable in Vietnam. Specifically, it demonstrates combinations among a feminist approach for how corporate governance in the 4.0 era and the role of law that may result in the rupture of the masculinist orientation in most firms today. This paper can bring an expanded view and bolster the position of worldwide women in general and Vietnamese women in particular.

## **2. Application of feminist legal theory in corporate governance**

### **2.1. Alternative theories in corporate governance**

#### *a. Agency theory*

Corporate governance is not a far-fetching term to most firms today, especially for listed corporations. In general, corporate governance is a crucial issue getting the attention of not only principals but also agents as well as lawmakers because all of them represent different interests. In detail, the principals (shareholders) are the owners of the firms, so they want to maximize their profits and minimize the agency cost; whereas, the agents (board of directors) are responsible for implementing the jobs based on fiduciary relation with the principals of the firms. The agents hold the right to manage the firm on

behalf of the principals. In addition, the corporate law and the corporate governance regulations set the rules to “play games” so these parties obtain their rights and responsibilities to perform clearly. Therefore, to restrict the agents' opportunism, the lawmakers have to take part in these “games” to protect the legitimate rights of the principals. It can be said that agency theory is a typical rationale of many scholars' study that have researched the nature of the firms (3).

#### *b. Feminist legal theory*

According to Henry Ford: “A business that makes nothing but money is a poor business.” Hence, the purposes of establishing and running a firm are not just for profits. It means the agency theory is not a unique theory applied in managing a firm. The more society develops, the more concerns about the community are enhanced. So, feminist legal theory has “rang a bell” for people not to forget the social good of firms and challenged the corporate governance perspective.

In the previous researches that many scholars reviewed the literature on women and firms, they “did not really start talking about corporations as a feminist issue until 1977 (4)”. There are three mainstream feminist ideas: liberal feminism, socialist feminism, and radical feminism (4).

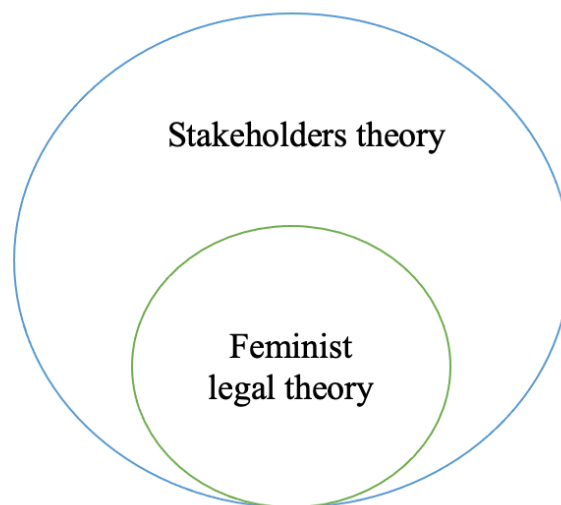
“Scholars and historians have broken the history of feminism into what they call “waves” to help identify the different movements and ideologies present within feminism (5)”. So far, according to Martha Rampton, this scholar defined “four waves” of feminism with typical characteristics of each phrase (6).

First, until the mid-nineteenth century, the ideas of feminism were alive and well long before the “first wave” but had not been organized into an identifiable movement (7,8). In this period, women found themselves at a disadvantage and unable to have any say or power in the political decisions of their day. Subsequently, the first wave and beginning of American feminism formally began at the first woman's rights convention in Seneca Falls in 1848, organized by abolitionists Lucretia Mott and Elizabeth Cady Stanton (5). The next wave, lasting into the 90's, focused on amending the constitution to create greater social equality for women, and bringing sexuality and reproductive rights issues to the forefront. passing the Equal Rights Amendment to the Constitution guaranteed social equality for women (6). The third wave seeks to eliminate exclusions to these rights. Factors like Race, ethnicity, religion, etcetera, should not preclude equal protections and assurances to these rights(9).

“The second wave began in the 1960s and continued into the 90s... In this phase, sexuality and reproductive rights were dominant issues, and much of the movement's energy was focused on passing the Equal Rights Amendment to the Constitution guaranteeing social equality regardless of sex (6)”.

Some historians believe that extracting the feminists of color from their second wave “makes the second wave whiter than it was,”. “Third wave feminism is pluralistic and begins with the assumptions that women do not share a common gender identity or set of experiences and that they often interpret similar experiences differently. It seeks to avoid exclusions based on race, ethnicity, religion, sexual orientation, gender identity, and so forth” (9).

The feminist legal theory is applied in corporate governance that helps the stakeholders and related parties recognize the unique characteristics and talents of women in comparison to men. It can be said that the feminist legal theory is a subset of the stakeholders theory. This relationship can be demonstrated by the following figure:



**Fig 1.** Relationship of the stakeholders theory and feminist legal theory

## **2.2. Feminist legal theory – from theoretical perspective to practical application in corporate governance in the industrial revolution 4.0**

It can be said that the industrial revolution 4.0 is a catalyst paving the way for feminist legal theory to be applied significantly in corporate governance by listed companies worldwide to a greater extent due to the development of smart, connected technology that would become embedded within the firms. Needless to say, the firms now have to concern more about establishing their brand values and implementing corporate social responsibility besides just the target of making interest for the shareholders only.

Feminist legal theory is not just an ideology on papers created and voiced by historians and feminism scholars; this theory has been applied and proved its effect since the time it was launched and passed over “three waves” until now.

There is more than one method to transfer feminist legal theory into corporate governance to address gender discrimination or the masculinist orientation in most firms today.

*a. Legislation with gender quotas on boards of directors*

Obviously, laws play a vital role in consistently transferring a policy to reality due to its enforcement by the State. That is the reason why some countries advocate applying gender quotas on boards of directors in publicly traded and/or state-owned firms, such as Norway, Spain, Finland, Québec (Canada), Israel, Iceland, France, Italy, Kanya, Belgium, etc. While each country has its own process to enact these laws there is a general format each will follow. A defined gender quota is needed, a period of time to put that quota into effect, and the penalties for failure to comply. The range of disciplinary actions could be as simple as nullifying board appointments in Spain to the extreme consequences in Norway, the dissolution of the company.

“Across countries, enacted legislation takes a variety of forms but generally consists of a set gender quota (usually 33–50%), time period (often 3–5 years), and penalties for non-compliance (e.g., in Spain, any board appointment that violates the quota is considered null; in Norway companies are dissolved). The Norwegian government was the first to establish a 40% female quota in 2003, for compliance by 2006 for state-owned firms and 2008 for publicly traded firms” (10). For detail information of some countries with gender board quotas, see the table below from “International Finance Corporation (10):

<b>Indicator</b>	<b>Female share of seats on boards of the largest publicly listed companies</b>			
	<b>Total</b>			
<b>Unit</b>	<b>Percentage (%)</b>			
<b>Sex</b>	<b>Women</b>			
<b>Time</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>Country</b>				
Australia	28.7	31.5	31.2	34.0
Belgium	30.7	32.0	35.9	38.4
Canada	25.8	27.0	29.1	31.3
Finland	32.8	34.5	34.2	35.1
France	43.4	43.9	45.3	45.1

Germany	31.9	33.8	35.6	36.3
Iceland	43.5	45.7	45.9	44.4
Israel	23.1	24.5	21.6	24.3
Italy	34.0	36.4	36.1	38.4
Norway	42.1	40.2	40.2	40.4
Spain	22.0	23.7	26.4	29.3
United Kingdom	27.2	29.9	32.6	34.7
United States	21.7	23.4	26.1	28.2

**Table 1. Female share of seats on boards of the largest publicly listed companies in some countries (10).**

Based on the table above, it can be concluded that the lawmakers of those countries have alternative approaches to corporate law that combine “communitarianism and socio-economics” (11). Applying feminist legal theory in corporate governance encourages recognizing women’s values and treating them fairly in an ethical way compared to men. Clearly, all women do not share the same values and goals, and their interests are separated by class and race. However, the almost complete absence of women’s participation in boards’ seats in corporate decision making means an important set of governance perspectives is lost (11). Therefore, feminist values can enhance corporate governance with the tool created by feminist scholars – feminist legal theory.

A diversity of views in the corporate boardroom with a diversity of directors’ gender may result in more appropriate firm decisions. Firms with a greater feminine influence seem to have core values that generate greater bonds of trust that improves efficiency over masculine influences. “Feminine firms, based on values of connectedness and relationships, are able to generate bonds of trust that overcome the inefficiencies of its masculine counterpart” (12). Especially in era 4.0, the firms’ reputation can be rapidly spread by various media when they put women’s rights equal to men’s at work, and have fair treatment for the women based on ethical responsibility.

Besides the pros of the “hard” laws on corporate governance to set a minimum percentage of women on corporate boards’ seats, this regulation is also argued with some cons. First and foremost, by making the gender quota such a priority many inexperienced women are being pushed into positions they are not ready to assume to the detriment of the company and its stock performance (13). There

is suspicion that this quota law forces unqualified women getting hired to be in charge of a board's seat just to satisfy this criterion set by law which is damaging to how their leadership is perceived regardless of actual performance. The question of if the position was earned or given will still be present. "the gender quota has led to large numbers of inexperienced women being appointed to boards, which has seriously damaged the firms' stock performance" (13). There is suspicion as this quota law pertains to unqualified women being hired to be in charge of a board's seat, just to satisfy this criterion set by law.

In addition, with some of the lowest rates of female percentage in the corporate boardroom in Morocco (0 %), Japan (0.9 %), and Chile (2.4 %), and some other countries (10), they do not mean that the position of women in those countries is not recognized. Perhaps the women in these countries do not tend to get involved at the corporate board level, but they are still happy with their choices. So, the small number of women who have taken corporate board's seats cannot say that women's rights are not cared for in those countries.

Third, feminist legal theory paves the way to empower the talents of women in many aspects, and this literature is also performed in corporate law is a positive signal from the lawmakers. However, the gender quota law clouds the achievements of women already holding board seats in corporations(14). As previously stated, the question of if the position was earned or given leads to the idea of tokenism where others believe they only received their seat to fill the quota, not because of actual belief in their ability(5). "diminishes the achievement of women who already hold seats in corporate boardrooms" (14). "This sense of betrayal could lead to tokenism, an idea that is brought forth if women are simply hired to fill the quota. Tokenism exists when others question one's placement in the board due to quotas" (5). The token will become socially isolated from the group and become more cautious in advancing their careers (15).

Moreover, with the force of implementation of the quota law, some firms have to take action to look for female candidates just to build "a shield" in order to qualify externally that "could possibly hurt current and future female employees, moving backwards instead of promoting the advancement of the careers of women" (5).

Above are just some arguments of the quota law. It is evident that each phenomenon has two sides: positive and negative. When Norway lawmakers promulgated the quota law, they absolutely considered that the potential pros of this policy outweigh the negative impact in its application.

However, other countries with different infrastructures cannot completely “copy” this method of Norway in their own countries even though we cannot deny the spirit of feminist legal theory in this quota law.

*b. Codes of conduct - “soft laws” relating to feminism*

Codes of conduct are principles, policies created by organizations or the firms themselves to ensure uniform application of regulations within the firms and raise awareness of the boards of directors/employees about corporate social responsibility, including gender awareness. Different from the gender quota on corporate boards, the codes of conduct or so-called “soft laws” stimulate including women to a set target without the fear of penalties that create the token stigma (16).

Different from the gender quota on corporate boards, the codes of conduct or so-called “soft laws” stimulate “gender diversity on boards via “soft quotas”, where, although a gender target is set, no sanctions will apply for failure to reach the target” (16).

“Corporate governance and ethics brings to light the question of the business practices regarding support for the feminist movement” (5). Application of codes of good governance that include board gender recommendations is popular in worldwide, e.g “Australia’s Corporate Governance Principles and Recommendations (4th edition, 2019), which like the UK Corporate Governance Code operate on a “comply or explain” (or “if not, why not”) basis, states, for example, that listed entities should set “measurable objectives for achieving gender diversity in the composition of its board, senior executives and workforce generally” and should, in relation to each reporting period, disclose the entity’s progress towards achieving those objectives” (10,16); Germany with Corporate Governance Code that board appointments need to make considerations for diversity and female representation through set objectives which are then published in the Corporate Governance Report (10).regulates “when appointing the Management Board, the Supervisory Board shall respect diversity, specifically an appropriate consideration of women; the Supervisory Board shall take diversity into account, establishing concrete objectives, and stipulating an appropriate degree of female representation; the concrete objectives of the Supervisory Board and the status of the implementation shall be published in the Corporate Governance Report” (10), etc.

Corporate governance code of conducts – “soft laws” with recommendations on board diversity are a positive trend in era 4.0. The previous study found that once the governance codes were established there was a positive increase in director participation (17). “the existence of corporate governance codes was positively correlated with director participation”(17). In addition, a Thomson Reuters study



stated that “regional trends in female board representation were driven largely by regulatory requirements” (9).

Through the lens of feminist legal theory, corporate governance contributes to making policies to balance women’s rights at work become more flexible than the statutory law – quotas law.

### **3. Application and recommendation of a feminist a corporate governance model in Vietnam’s practice**

Corporate governance in Vietnam, which is a topical issue that has a lot of concerns from stakeholders and related parties, is governed by the statutory laws and the codes of conduct. With the purposes of evaluating the rights of women on corporate boards in Vietnam, this part is carried on the study of feminist corporate governance for the time being.

#### **3.1. About the corporate governance regulations of Vietnam’s laws**

In Vietnam, corporate governance is mainly regulated by Law on Enterprises No. 59/2020/QH14 (“Law on Enterprise”), Law on Securities No. 54/2019/QH14 (“Law on Securities”), and guidelines documents such as Decree No. 155/2020/ND-CP of the Government on corporate governance of public companies (“Decree 155”); Circular No. 96/2020/TT-BTC of the Ministry of Finance on disclosure of information of public companies (“Circular 96”).

For the time being, we hardly can see any articles prescribing women’s rights or feminist ideology on corporate governance in the above statutory laws. As mentioned in the opening of the paper, “when no race is specified, that silence codes as white; when no sex is specified, that silence codes as male” (2). So, it can be inferred that feminist legal theory was waned or forgotten by the lawmakers when having enacted corporate governance regulations that are mandatory for all public companies operating in Vietnam in this context.

To this extent, the question arises, has the issue of gender diversity/or gender balance not been considered in the realm of Vietnamese corporate law before? Actually, there was a Decree No. 71/2017/ND-CP (“Decree 71”) of the Government on corporate governance of public companies regulated on Composition of the Board of directors: “The board of directors of a public company must have 3-11 members. The composition of the board of directors must be balanced in terms of the number of members having knowledge and experience in law, finance and business operations of the company and **gender balance**” (Article 13.1 of Decree 71). Currently, Decree 71 is now invalid and replaced by Decree 155. It is not simple to explain why the lawmakers removed this article in

corporate governance activities in legislation documents, whereas this term displayed the evolution of eliminating gender discrimination that was rooted for a long time. When comparing the change of those documents, it can be concluded that the gap of regulations on empowering feminine characteristics on corporate boards may result in the “concrete of dominant masculinist orientation” in most Vietnamese firms today.

However, it is not too pessimistic for Vietnamese women because according to the previous survey was taken place in 2019, Thailand has the most remarkable board gender diversity in the region, with women holding 20.4 percent of board seats in listed companies, followed by Vietnam (15.4 percent) and Indonesia (14.9 percent)” (9). Hence, Vietnam is still in the top three of the greatest board gender diversity of ASEAN. This percentage of Vietnam does not reach 33% or 40%, 50% like Italy, Norway, Québec respectively but it reflects the reality of women seats on corporate boards in Vietnam Basically, Vietnam is an improving country with different infrastructures, points of views, cultures, habits, etc. in comparison to developed countries, so we cannot set quotas gender law on corporate board same as the model of the above-listed countries.

### **3.2. About “soft laws” relating to women on corporate board in Vietnam**

Recently, the Vietnam Corporate Governance Codes of Best Practice (Vietnam CGBP) was first launched in 2019 that remarked a milestone for Vietnam’s corporate governance.

Vietnam CGBP has been published to help companies go further by approaching international best practices to meet investor and stakeholder expectations. Similar to other countries' approaches, the CGBP is potentially issuing a “Comply or Explain” Corporate Governance Code in the near future, intended to assist evaluation and improvement of the public company framework and practices for corporate governance (19). “The CGBP is also intended to assist the State Securities Commission and other policymakers to evaluate and improve the public company framework and practices for corporate governance, potentially issuing a “Comply or Explain” Corporate Governance Code in the near future, in line with common approach adopted by countries globally and in ASEAN” (19).

The Vietnam CGBP prescribes one of the principles to establish a competent professional board considering the diversity of gender (in Article 2.1.2 and 2.1.4). In addition, this CGBP regulates at least two female members or 30% whichever is greater for optimal diversity benefits on the board (19). : “the Board should aim to have **at least two female members** or **30% of female directors** to optimize the benefits of gender diversity on board” (19).

The Vietnam CGBP follows the gender quotas on the Norwegian law on the corporate board but adjusting the percentage to suit Vietnamese context. However, this is currently just a “soft quota”, the Vietnamese public companies are not being forced to apply this rule immediately. This regulation is just an encouragement for the firms to care more about gender diversity/balance in the boardroom.

### **3.3. Recommendation of a feminist a corporate governance model in Vietnam’s practice**

Vietnam's socio-economic conditions are different from other countries, so when applying feminist legal theory to corporate governance, it is necessary to have the the appropriate recognition from legislators, awareness of the firms and other stakeholders' cooperation in this activity.

*First and foremost*, with the current context, in order to fill the gap of statutory law on the gender diversity of the corporate boardroom, the lawmakers should review all laws relating to corporate governance, then supplement the terms that prescribe gender diversity in corporate boards’ seats is supportive of bolstering the position of women nowadays and defeating the masculinist orientation in most boards of directors in Vietnam today.

*Second*, this phrase is not suitable for Vietnam to apply gender quotas on corporate boards because corporate governance in Vietnam needs time to improve gradually. Moreover, the awareness of firms’ managers is still restricted about the social nature of the firm. They are just focusing on creating profits without recognizing the social goodwill of the firm they are running.

*Third*, launching the Vietnam CGBP is a promising step to transfer feminist legal theory from the “soft law” to practice in the future. Furthermore, policy-makers should have other programs to promote gender equality in the workplace. Consideration should be given to make the workplace more family-friendly. Flexible hours and childcare offerings would allow working parents to further their careers not at the expense of their home lives. Helping women transition and balance corporate and home duties will improve retention and career opportunities without forcing a decision or unnecessary sacrifice between the two(5).“In Gender Quotas on Boardroom and Representation in Europe, Anita Fichtl mentions “the focus should be on their [company] expansion combined with the introduction of more flexible hours and links to other local childcare offerings.” The restructuring of companies to be more family- friendly would enable mothers to keep moving up in their careers without having to sacrifice more time off work. By creating programs to help women transition from motherhood to the corporate world, companies could eventually decrease the possibility of women trading their successful future careers in fear of not being able to juggle their workload and family duties”(5).

*Last but not least*, changing women's perception of their own role and capacity is extremely crucial, because if the law regulates or even emphasizes women's rights, the CGBP have principles that apply feminist legal theory; incentive programs are created to promote gender diversity in corporate governance, but it is the women who "advise themselves" belonging to the kitchen and think that management is the job of men, housework is the job that brings happiness to women's and their family that will absolutely never rupture male - centered view model as is in Vietnam currently.

## **Conclusion**

It is likely that the feminist legal theory will never put an end to researches because its applicability. Corporate governance is a realm that can advance the "feminism wave" in connection with the industrial revolution 4.0 to unlock the door for women to be upbeat to take seats in a corporate boardroom that men have mostly occupied. This paper brings the neutral views on corporate governance models that are applying worldwide, then from Vietnam's current corporate governance practices to make recommendations in line with the goal of balancing and flourishing gender diversity in corporate governance in Vietnam. As well, this is a study that contributes to feminist voices without borders in the private realm - corporate governance./.

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