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 as 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 to 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 - "not only for profit, but also for the social good". The position of women in both corporate law and corporate governance now is waned or not even specified. 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. 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. Furthermore, in this research, the author also analyzes neutrally the gender quotas on the corporate board from the perspective of corporate governance. 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 may result in the rupture of the masculinist orientation in most firms today. This paper would bring an expanded view and bolster the position of worldwide women in general and Vietnamese women in particular. Key words: corporate governance, feminist legal theory, the industrial revolution 4.0, Vietnam

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INTRODUCTION

The application of feminist theory in policy and lawmaking 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 managers². 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 worst dangerous for women because when no race is specified, that silence codes as white; when no sex is specified, that silence codes as male².

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 women². 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

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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.

APPLICATION OF ALTERNATIVE THEORIES IN CORPORATE GOVERNANCE

Alternative theories in corporate governance

Corporate governance is not a far-fetching term to most firms today, especially for listed corporations. In general, corporate governance is a topical issue getting a lot of concerns from not only the lawmakers but also the shareholders as well relating parties. 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 to 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 when having research on the nature of the firms³.

When applying agency theory, the principals and lawmakers believe that it can reduce the cost of the firms' governance and maximize the principals' profits. However, this theory results in an unexpected impact that is not to realize social nature of the firms. According to Henry Ford: "A business that makes nothing but money is a poor business." 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". Quite frankly, it is not easy to have a complete definition of a feminist legal theory. Generally, the feminist legal theory, also known as feminist jurisprudence, based on the political, economic, and social equality of sexes. As a field of legal

scholarship, feminist jurisprudence began in 1960s. It now takes a vital role in the legislative process. This theory brings various approaches for the lawmakers and others to take action against sexual and domestic violence, inequality in the workplace, and gender-based discrimination⁵.

Feminists believe that history was written from a masculine-centered view and does not recognize women's role in making history and structuring society. Feminists challenge the belief that the biological make-up of men and women is so different that certain behavior can be attributed on the basis of sex. Gender, feminists say, is created socially, not biologically. Sex determines such matters as physical appearance and reproductive capacity, but not psychological, moral, or social traits ⁵. Feminists speak out with the aim of gradually fading the view of masculine in most aspects in our society and recognizing the right role of women, balancing women's position to men's. Therefore, gender is a crucial issue of the feminist legal theory.

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 theory is a subset of the stakeholders theory because the **stakeholder theory** is a theory aiming to enhance the effect of the firms' activity and incorporating the interests of any third parties that have some level of dependence on the corporation like employees, suppliers, local communities, creditors, and others ⁶; whereas, the feminist legal theory mainly focuses on protecting and balance women's rights.

This relationship can be demonstrated by the following Figure 1.

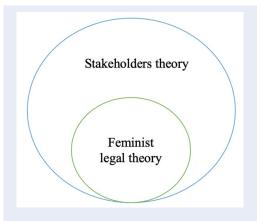


Figure 1: Relationship of the stakeholders theory and feminist legal theory

Feminist legal theory – from theorical 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.

Basically, industry revolution 4.0 will lead to a lot more automation in production and in all industry. This also results in huge change of mindset at managerial level and the problems of downsizing and re/cross training workforce resources. As such the prejudice toward men being the stronger resource will be negated and women will become more equally recognised and rewarded. Traditionally, more empathetic people with a pragmatic view to both the personel and management will lead towards both more visibility and more empowerment of women at Board of Management level.

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" ⁷ 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 consistently 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 stateowned firms, such as Norway, Spain, Finland, Québec (Canada), Israel, Iceland, France, Italy, Belgium, etcetera.

The gender quota law is a way that the State promulgates laws to proportionate ratio of sexes at senior representative and board of management level must be mandated. The lawmakers in those countries think that this is a sufficient method to have greater board gender diversity. 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 company⁸. So far, it can be said that Norway and France set minimum ratios of women on board are both 40 % and the listed corporations in these places qualified this requirement in practical.

To have a general view of applying gender quota laws in some countries, the Table 1 is the statistic (not a quota set by laws) of female share of seats on boards of the largest publicly listed companies in some countries.

It can be concluded that the lawmakers of countries where set quota laws have alternative approaches to corporate law that combine "communitarianism and socio-economics" ¹⁰. 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 a gender balance is lost ¹⁰. 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 better bonds of trust that improves efficiency over masculine influences ¹¹. 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, have fair treatment for the women based on ethical responsibility.

Besides the pros of the "hard" laws on corporate governance to set 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 firm and its stock performance ¹². 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.

In addition, with some of the lowest rates of female percentage in the corporate boardroom in Morocco

Table 1: Female share of seats on boards of the largest publicly listed companies in some countries 9

Indicator	Female share of seats on boards of the largest publicly listed companies			
	Total			
Unit	Percentage			
Sex	Women			
Time	2017	2018	2019	2020
Country				
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

Source: OECD. Stat.

(0 %), Japan (0.9 %), and Chile (2.4 %), and some other countries ⁸, 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 may cloud the achievements of women already holding board seats in firms ¹³. 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 ⁷. The token will become socially isolated from the group and will become more cautious in advancing their careers ¹⁴. 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 be detrimental to female employees rather than promoting equality and the progression of women's careers 7.

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 potentials of pros of this policy outweighs 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 15.

The way businesses conduct themselves in order to comply with corporate governance and ethics displays their feelings about the feminist movement 7. Application of codes of good governance that inculde 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 improvement process toward full equal representation on both race and gender. These targets should follow the SMART methodology (Specific - Measurable - Actionable - Realistic - Timely) 8,15; Germany with Corporate Governance Code that regulates board appointments need to make considerations for diversity and female representation through set objectives which are then published in the Corporate Governance Report⁸, etcetera.

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 forward-looking increase in director participation ¹⁶. In addition, a Thomson Reuters study stated that regional trends in female board representation had been driven largely by regulatory requirements ¹⁷. 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.

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.

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").

According to Law Promulgation of Legislative Documents No. 80/2015/QH13 (Article 35.2) and Decree No. 34/2016/NĐ-CP of the Government on detailing a number of articles of, and providing measures for implementing, the Law on Promulgation of legal documents (Article 6.3) and Decree No. 154/2020/NĐ-CP on amendments and supplements to a number of Articles of Decree No. 34/2016/ND-CP of May 14, 2016 of the Government detailing a number of Articles and measures for implementation of legal documents (Article 1.3.a), gender impact assessment is an ex-ante step of formulation and promulgation of legislative documents in case the policies can influence on gender. Hence, this procedure had been carried out properly by the time the Law on Securities and Law on Enterprises passed by the National Assembly. However, 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, the lawmakers would rather clearly state the gender diversity policy in corporate governance in the legislative documents than leave a gap like now.

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)" 17. 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 board 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.

About "soft laws" relating to women on corporate board in Vietnam

Recently, the Circular 116/2020/TT-BTC (providing guidelines for implementation of some Articles on administration of public companies in the Government's Decree No. 155/2020/ND-CP dated December 31, 2020 elaborating some Articles of the Law on Securities) is a legal document for the public companies in Vietnam to refer when they establish corporate governance models. However, the model charter, corporate governance regulations, regulations on operation of the Board of Directors, and other regulations drafted in this document are just recommendable for the public companies to apply in their corporate governance. In addition, there is no article regulating the ratio of women on board, just has requirements of independent directors in the board of directors in different cases.

Additionally, 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 18.

The Vietnam CGBP prescribes one of the principles to establish a competent professional board is 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 ¹⁸.

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 been 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.

Recommendation of a feminist a corporate governance model in Vietnam's practice

It is undeniable that the Vietnamese State has been taken a lot of action to gradually balance the women's rights by promulgating laws and policies in various realms such as labor, marriage and family, administrative sector, etc. One of the powerful women in Vietnam, who is taking a board seat in HDBank, CEO of Vietjet Air is Ms. Nguyen Thi Phuong Thao, a billionaire in our country. Absolutely, she is not an only one woman spreading the spiritual of dedication, success in business to other women. We firmly believe that women's talents are not less than men's and they can express their ability when make opportunities for them to perform.

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 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, policymakers 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 two⁷. 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 especially 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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DECLARATION OF CONFLICT

The author declares that she has no conflicts of interest.

AUTHOR'S CONTRIBUTION

Author (Le Thi Khanh Linh) is responsible for the whole content.

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TÓM TẮT

Lý thuyết pháp lý nữ quyền được biết đến là tiếng nói cho quyền của phụ nữ trong các hoạt động chính trị và cộng đồng. Tuy nhiên, khả năng ứng dụng của lý thuyết này không chỉ áp dụng trong các lĩnh vực trên mà còn được vận dụng trong quản trị doanh nghiệp, đặc biệt là trong thời đại cách mạng 4.0. Bài viết là nghiên cứu về việc sử dụng lý thuyết pháp lý nữ quyền trong quản trị doanh nghiệp khi nhìn nhận bản chất xã hội của doanh nghiệp – ``không chỉ vì lợi nhuận mà còn vì trách nhiệm cộng đồng". Vị trí của người phụ nữ trong cả pháp luật cổng ty và quản trị doanh nghiệp hiện nay khá mờ nhạt hay thậm chí không được cụ thể hóa. Chính vì vậy, để trao quyền cho phụ nữ và cân bằng giới trong quản trị doanh nghiệp, việc áp dụng lý thuyết pháp lý nữ quyền trong quản trị doanh nghiệp là một việc làm cấp thiết. Thêm vào đó, cuộc cách mạng cổng nghiệp 4.0 cũng tác động đến quản trị doanh nghiệp – đây được xem lai ``cơ hội chín muồi" cho các nhà lập pháp và các nhà quản trị tận dụng để xây dựng và phát triển mô hình quản trị dưới lăng kính nữ quyền, thay vì áp dụng mô hình nam giới là trọng tâm như hiện nay. Ngoài ra, trong bài nghiên cứu này, tác giả cũng phân tích một cách trung lập hạn ngạch giới trong hội đồng quản trị từ khía cạnh quản trị doanh nghiệp. Bài báo này cho thấy một bức tranh toàn cảnh về lý thuyết và thực nghiệm quản trị doanh nghiệp nữ quyền trong bối cảnh hiện nay. Bài viết cũng phân tích các mô hình quản tri doanh nghiệp nữ quyền trong nghiên cứu trước đây của các học giả khác để xác đinh mô hình nào phù hợp nhất ở Việt Nam. Cụ thể, nó thể hiện sự kết hợp giữa cách tiếp cận nữ quyền đối với cách thức quản trị doanh nghiệp trong thời đại 4.0 và vai trò của luật pháp có thể dẫn đến sự phá vỡ định hướng nam quyền trong hầu hết các doanh nghiệp hiện nay. Bài báo này sẽ mang lại một cái nhìn mở rộng và nâng cao vị thế của phụ nữ trên toàn thế giới nói chung và phụ nữ Việt

Từ khoá: quản trị doanh nghiệp, lý thuyết pháp lý nữ quyền, cuộc cách mạng công nghiệp 4.0, Việt Nam

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