

## Vietnam and International Criminal Law on the Penal Liability of the Personal Legal Liability for Environmental Policy

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### Abstract

*Environmental issues are major concerns to Vietnam and other countries worldwide, not only developed countries but also developing ones. That handling the acts of causing environmental pollution has caused damages to property, human health, and life and dramatically affected to its economy<sup>1</sup>. The criminal law of Vietnam and other countries in the world has provisions related to handling acts of causing environmental pollution by legal entities, including criminal liability for criminal juridical persons.*

**Key words:** The criminal law, environmental pollution, criminal liability.

### I. The criminal liability for environmental pollution by the juridical person.

The Criminal issue liability of legal entities is an issue mentioned not only in national law but also in international law. The international community within the United Nations has adopted international anti-crime treaties, clearly recognized legal liability (including administrative liability or criminal liability). It is recommended that the second subject's responsibility by the first person who is an individual for certain crimes be determined by the countries. There are many different views upon posing criminal liability of legal entities, such as that legal entity which is just an abstract one and its actual existence is based on the decisions of one or more representatives who, according to the abstraction, are seen as the decisions of the juridical itself<sup>2</sup>.

According to traditional conception, long ago countries worldwide believed that the subject of criminal liability is individual (natural person) based on the principle of personalization of criminal responsibility and the purpose of the punishment. Arguing this, juridical persons are believed to be collectives of specific people (individual) by criminal forensic scientists. That acts of specific persons carry out juridical persons' violations are not criminal. However, criminal responsibility is the specific people (natural persons) who committed violations of the laws. Some of the purposes of punishment are education, re-education, and castigation that will not work if applied to the entity but not to specific people<sup>3</sup>. The actual price upon applying criminal liability, after all, is not the legal entities themselves but the specific individuals in the legal entity such as equity contributors, shareholders, employees, etc. Likewise, the criminal liability institution of a juridical person is not legally or morally acceptable<sup>4</sup>.

Meanwhile, according to modern conception, the subject of criminal liability is individuals with the above subject matter conditions and organizations (legal entity). The issue of criminal liability of legal entities has been legislatively adjusted in the criminal law of many countries, not only in Common Law countries and continental Europe but also recognized in some countries. Asian countries like Japan, Singapore, and especially China, a neighboring country of Vietnam, also strongly oppose accepting criminal liability of legal entities.

It can be seen that the countries mentioned above follow modern criminal law doctrine, consider the subject to criminal responsibility which are not only as an individual but also as a juridical person by recognizing the principle that the juridical person is to criminal liability in criminal law. The juridical person is not a pure legal abstraction.

<sup>1</sup><https://litteritcostsyou.org/o-nhiem-moi-truong/>

<sup>2</sup> M.F.C von Savigny, *Traité de droit romain*, p.312

<sup>3</sup> Donnedieu de Vabres (1947), *Traite de droit criminel et de legislation penale compare*, Paris, Sirey, p.149

<sup>4</sup> Thomas Hobbes (1971), *leviathan, tra. par F.tricaud*, Paris, Sirey, p.247

On the contrary, it possesses a constant characteristic, having its actual existence in distinction from the juridical person's members<sup>5</sup>. A juridical person is not a natural person but an organization - a collection of people - given by the law as a person in a legal relationship<sup>6</sup>. Therefore, dangerous behavior to society can be caused by a group due to making wrong decisions. And a crime can also be caused by individuals or organizations<sup>7</sup>. In other words, a juridical person is not a fictional subject but an "independent social entity". Legal entities are also born, as well as heads and individuals, acting as individuals. A juridical person is an entity having its own will and desires, is treated freely and enjoys the subject's autonomy as an individual, and can commit crimes in a defective manner as well as must bear criminal responsibility. The accusation of criminal liability to a juridical person is not an objective offense.

Based on imposing criminal liability of juridical persons, other countries' laws also stipulate criminal liability of juridical persons for all crimes specified in the Penal Code or specific crimes, including crimes of environment.

## II. Vietnamese criminal laws on environmental pollution by criminal liability of legal entities

It can be seen that the 2015 Penal Code has officially recognized the subject of criminal responsibility as a legal entity for the first time, which is a breakthrough innovation in Vietnam's criminal policy, concretize the Party's resolutions and the 2013 Constitution. This is to further promote the Code as a sharp and effective legal tool in the fight against crime and change traditional perceptions of crime and punishment<sup>8</sup>. In Clause 2, Article 2 stipulates: "Only a commercial legal person committing a crime specified in Article 76 of this Code shall bear criminal responsibility". Vietnam's criminal code stipulates that the juridical person with criminal responsibility is only a commercial legal person. The juridical person is only criminally responsible for several specific crimes specified in article 76 of the annual penal code 2015.

The provision of criminal liability for legal entities allows asserting that Vietnam has a complete legal framework and has enough criminal enforcement to deter crimes committed by legal entities. Up to the present time, Vietnam's criminal law has been compatible with international law, particularly with the United Nations Convention on the Prevention and Control of Transnational Crime (TOC Convention) that Vietnam Nam signed with the following content: "*Each Member State will enact the necessary measures following the basic principles of national law to determine the legal liability of the juridical person in engaging in serious crimes related to organized crime and in the commission of criminal acts according to articles 5, 6, 8 and 23 of this Convention;*"<sup>9</sup>.

On the basis of imposing criminal liability of juridical persons, crimes for which legal persons must bear criminal liability are also stipulated by the Vietnamese criminal code, including environmental crimes under Article 76 of the penal code 2015. In addition, the crime of causing environmental pollution specified in Article 235 is one of the crimes related to the environment for which commercial legal entities must bear criminal liability for acts that constitute a crime. Compared to the previous regulations, the 2015 Criminal Code was revised to constitute environmental crimes to specific acts and quantify specify violations. Particularly for the crime of causing environmental pollution, in this codification of the criminal code, lawmakers have made a significant amendment and supplement towards: describing and listing in detail the types of acts. The micro polluting environment includes: burying, dumping, or discharging hazardous waste or persistent organic decomposition into the environment, discharging sewage, burying, dumping, discharging solid waste into the environment, and radiation released into the environment, etc. quantify the factors causing the negative consequences for environment<sup>10</sup>. This has created a relatively complete and specific legal basis to absolutely handle the acts constituting crimes and ensuring enough deterrence and repulsion of acts that cause environmental pollution.

<sup>5</sup>Trinh Quoc Toan, Penal liability of legal entities in criminal law, National Political Publishing House, Hanoi, 2011, p.229

<sup>6</sup>Athur Taylor von Mehren & James Russell Gordley (1977), *The Civil Law system (An introduction to the comparative study of law)*, second Edition, little, brown & company, Boston & Toronto.

<sup>7</sup>Dao Tri Uc, More Correct Awareness of the Principles of Personal Responsibility and Errors in Handling Criminal Liability, State and Law Magazine, No. 9/1999, p.75.

<sup>8</sup>In Resolution No. 22 / NQ-CP dated March 22, 2014 on the March 2014 legal meeting session, the Government has directed "it is necessary to stipulate criminal liability for economic legal entities. on the basis of research, clearly identifying relevant issues, ensuring compliance with our country's reality and feasibility". This viewpoint also received the approval of the Central Judicial Reform Steering Committee.

<sup>9</sup>See article 10, United Nations Convention on the Prevention and Control of Transnational Crime (TOC Convention).

<sup>10</sup>Before, Article 182 of the 1999 of Vietnam Penal Code provided the orientation of calculating the consequences of damage with the phrase "in serious level" or "causing serious consequences" of general nature, without specific provisions leading to difficulty in applying. and arising problems and shortcomings.

Significantly, Vietnam is considered to be a member in implementation of international treaties on environmental protection when the subjects have the criminal and meet the requirements of integration.

Commercial legal entities admitting causing environmental pollution under Article 235 of the Penal Code is subject to the following main penalties: fine, suspension of operation from six months to 2 years; Additional penalties include: permanent shutdowns is one of the main penalties; fines, business prohibitions, activities prohibitions in specific fields from 1 to 3 years. Besides, provided that a juridical person commits to causing environmental pollution that constitutes a crime and is subject to criminal liability. In that case, that juridical person must also take measures to compensate for damage caused on environmental pollution by your cause. Article 48 of the 2015 Penal Code provides for compensation as follows: *“Offenders must return the appropriated property to their lawful owners or managers, repair or compensate for material damage identified due to the crime. In case of a crime causing mental damage, the Court forces the offender to pay compensation for material, and publicly apologizes to the victims”*.

That criminal acts cause environmental pollution in particular and environmental crimes in general have consequences that are considered as mandatory signs to constitute a crime. Most of the offenders cause specific detriment to individuals, organizations, and society. Hence, the compensation for damages includes the content that the party causing the damage must overcome the consequences by compensating for physical and mental losses to the damaged party as there are any acts causing environmental pollution. In environmental pollution cases, the damage caused by entities is usually health and property damage<sup>11</sup>. In principle, the aggrieved person is obliged to prove that the damage has occurred, and the level of compensation will equal in the level of the damage. However, this principle is only applicable to liability for material damages. In contrast, in the case of mental damages, it is clear that the losses can be invisible, calculable, and challenging to prove. That's why, in this case, the law needs to set a certain level for competent State agencies to apply in case a person violates the moral rights of another person. Environmentally compensatory damages affirms the state's attitude in protecting property of various forms of ownership, does not allow the infringement of anyone's properties even if it is for the whole population or collective ownership, private ownership, joint ownership, protection of infringed interests, requires recovery of all or a part of the damage caused<sup>12</sup>.

### **III. International laws provide for criminal liability of juridical persons for acts of causing environmental pollution.**

Increasing the use of criminal law to combat environmental pollution acts is a common trend of many countries in the world, especially the polluting acts caused by legal entities. Research on the countries worldwide' criminal law shows that the criminal coercion measures applied to criminals in different countries of the various systems are also different. Specifically, criminal enforcement measures include the following groups: 1) Penalties harming the reputation of the offender, 2) property penalties, 3) penalties for restricting the activities of the offender, 4) Penalties aimed at survival at the criminal's legal entity<sup>13</sup> and other criminal enforcement measures (including compensatory damages). Also, it can be seen that the issue of compensation liability for legal entities causing environmental pollution is also different in the regulations of each country. Having researched the laws of ASEAN countries and those of developed countries in the world, we found that there are countries regulated in a separate document on the environment, such as: Thai Law on Environmental Quality in 1992, Law on Singapore Pollution Control, Law on Clean Air of the Philippines 1999, Law on Environmental Quality of Canada, Law on Environment of Sweden, etc. Meanwhile, there are countries in the criminal code for environmental damages, such as the German criminal code, the Chinese criminal code, the Russian federal criminal code, etc.

In Europe, the European parliament issued the directive 2008/99/EC<sup>14</sup> of the European Council about protecting the environment through criminal law to address the problems caused by the increasing rate of environmental crime in the EU region. Accordingly, in Section D, Article 2 of the above directive means that every organization has a legal status under the law of the country of registration as a legal entity.

<sup>11</sup> See <https://tapchitoaan.vn/bai-viet/nghien-cuu/trach-nhiem-boi-thuong-thiet-hai-do-gay-o-nhiem-khong-khi>

<sup>12</sup> Duong Thanh An (2011), Criminal liability for environmental crimes”, PhD thesis, Academy of Social Sciences, p.50

<sup>13</sup> See Cao Thi Oanh, Research on the theoretical and practical basis of applying criminal responsibility to organizations, Review report on scientific research at ministerial level, Institute of forensic science, Hanoi, 2011, page 41.

<sup>14</sup> Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law. Xem: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0099&fbclid=IwAR3G2F6OFcG\\_54OmEsc0d93oZ6S1kCfHfPn3eHT5JSgHTU3AXsKcwz8wRVQ](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0099&fbclid=IwAR3G2F6OFcG_54OmEsc0d93oZ6S1kCfHfPn3eHT5JSgHTU3AXsKcwz8wRVQ)

This can be clearly understood that the EU law does not regulate how an organization has legal status but applies the law of the European Union countries when regulating legal entities. Thus, according to the above provisions and individuals who are the subject of criminal regulations, that the European Union laws and the laws of countries within the EU also have legal provisions legal entity is the main subject of criminal law. Therefore, when a juridical person violates the provisions of directive 2008/99/EC, it is subject to binding, criminal liability from which the legal person is registered for operation, and the European Union's general laws. However, there are some exceptions when the organization exercises state authority or a public organization, the criminal liability for the legal entity, which may be considered in a different context<sup>15</sup>. In particular, in Article 6 of the above directive, it clearly stipulates legal liability. The directive also prescribes and requires member states to ensure that legal entities are accountable for the crimes outlined in Article 3<sup>16</sup> and 4<sup>17</sup>, based on the manager, the leader through the provisions of the right of legal representation; subjects has the right to decide on behalf of the juridical person (the subject with the right to represent); or organization with duties to control juridical person.

In addition, paragraph 2 of article 6 of the above directive also requires member states to insure if the person referred to in paragraph 1 lacks supervision or control and the crimes referred to in articles 3 and 4 are committed for the benefit, the juridical person must bear liability. Furthermore, the juridical person's liability referred to under paragraphs 1 and 2 does not exclude criminal proceedings against the natural persons who are the perpetrators, the instigators, or the supplement of the crimes referred to in articles 3 4 of the above directive. On that basis, to identify legal entities violating the criminal regulations under the 2008/99 directive, Article 7 also stipulates and requires EU member states to apply the necessary Criminal sanctions for the juridical person following the country's criminal law is adequately registered and effectively guaranteed. Nonetheless, the enactment of Directive 2008/99 / EC does not create obligations regarding the application of such penalties or any other available law enforcement systems under some certain circumstances. However, this Directive does not affect to other systems of liability for environmental damage under Community law or national law. Since this Directive provides for minimum rules, member states are able to free to apply or maintain stricter measures relating to the adequate protection of criminal law against the environment. Such measures must be compatible with the treaties to which states have signed or are members. For this Directive, in particular, to ensure more effective protection of the environment, Member States cannot achieve it sufficiently due to its size and impact. Therefore, to be better achieved at the Community level, this Directive establishes criminal law-related measures for more effectively environmental protection. Indeed, the above Directive is significant for the European Union, not only for the study but also for protecting the environment itself in the EU region.

As previously mentioned, often does environmental pollution have an enormous impact on a large scale, especially in the European Union when it is not limited to within a country but can involve in many countries. Among them, the most common offenders are international companies (commercial legal entities). Hence, from our point of view, it is reasonable to implement international environmental protection in this way, as the directive does not provide specific penalties for legal entities but only the laws of countries. Furthermore, criminal acts or sanctions must be through independent scrutiny according to national law and Council of Europe. This ensures the states' public reservations and the avoidance of legal conflict as well. Finally, the directive sets out the standards of criminal law for environmental protection. According to the given several studies, a more accurate assessment of the frequency of criminal acts in this group suggests that the subject of the criminal acts is legal entities in many cases, and often in the area of illegal trade such as possibly illegal trade in ozone-damaging substances, trade-in rare tropical plants, illegal waste disposal, etc.<sup>18</sup>.

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<sup>15</sup>Van den Wyngaert, Christine, et al., eds. *International criminal law: a collection of international and regional instruments*. Brill, 2011.

<sup>16</sup>Article 3 Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law. Xem: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0099&fbclid=IwAR3G2F6OFcG\\_54OmEsc0d93oZ6S1kCfHfPn3eHT5JSgHTU3AXsKcwz8wRVQ](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0099&fbclid=IwAR3G2F6OFcG_54OmEsc0d93oZ6S1kCfHfPn3eHT5JSgHTU3AXsKcwz8wRVQ)

<sup>17</sup>Article 4 Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law. Xem: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0099&fbclid=IwAR3G2F6OFcG\\_54OmEsc0d93oZ6S1kCfHfPn3eHT5JSgHTU3AXsKcwz8wRVQ](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0099&fbclid=IwAR3G2F6OFcG_54OmEsc0d93oZ6S1kCfHfPn3eHT5JSgHTU3AXsKcwz8wRVQ)

<sup>18</sup>Krstinić, Dalibor, Nenad Bingulac, and Joko Dragojlović, *Criminal and civil liability for environmental damage*, *Economics of Agriculture* 64.3 (2017): 1161-1176.

In addition to the EU law, there are also legal provisions related to environmental quality in Canada, not only must the direct violators be responsible, but the relevant entities are also responsible<sup>19</sup>.

Specifically, those who perform acts of helping others violate the provisions of this law or advise, encourage, and invite others to commit acts which are harmful to the environment are also considered to be illegal and must be subjected to the same penalty as the person doing the act. Thus, it can be seen that, in Canadian law, there is a clear distinction between the liability of the individual and the legal entity. The fines imposed on legal entities are always higher than those for individuals, and fines are the main penalty in Canada's environmental law. This demonstrates the responsible principle of organizations and individuals when using environmental components: organizations and individuals using environmental components must be accountable for making financial contributions and taking action. If causing damage to the environment, compensation must be made, and the law's restriction on the application of deprivation of liberty, enhancing economic penalties is consistent with the criminal system's general development trend penalties of developed countries. Sweden's environmental law has a new form of liability, which forces the person who caused the damage to buy the damaged property<sup>20</sup>. Accordingly, if an asset (such as land) is infringed, prevents the property owner from extracting part or all of the property's benefits or when the owner uses it wholly or entirely if a part of that property leads to adverse consequences (or leads to damage when used).

The damaging entity is required to purchase the lost property as the owner's request. This also applies to the cases when a person takes responsibility for remedying damages caused by his or her actions uses remedial measures that result in the owner's failure to exploit a portion or all benefits of property or when the owner using the property suffers adverse consequences. This provision ensures that damage will be remedied to the fullest extent. That the entity is responsible for repairing the damage will always be accountable for the same damage as it would be their property. In there, China stipulates criminal liability to legal entities for acts of causing environmental pollution in the Penal Code with charges of causing pollution of land, water, and atmosphere at 338<sup>21</sup>. In addition to criminal liability in the form of a fine, the Chinese Penal Code also stipulates: *"The direct managers and other personnel with direct responsibility will be punished according to the provisions of the articles on this item"*(article 346). The Chinese criminal code also stipulates that the offender is not only responsible for civil compensation, but also has to pay damages in case of economic damage in Article 36 as follows: *"if the offense is committed also causing economic damage, in addition to sanctions under the criminal law, specific circumstances must also be used to force the offender to pay compensation for economic damage"*.

The German Criminal Code also stipulates charges of polluting water sources (article 324), crimes causing land pollution (article 324a), and crimes of causing air pollution (article 325)<sup>22</sup>. Criminal liability to legal persons or individuals committing environmental crimes is imposed even when the act is unintentionally committed, or the crime has not been reached. This is the current trend when lawmakers around the world are considering and studying to regulate environmental crimes in general and the crime of environmental pollution in particular, regardless of the consequence factor. This will increase the level of deterrence and warning as well as ensure the effectiveness of the application of criminal laws in environmental protection.

#### **IV. The reality of applying measures of penal liability for legal entities or legal person's acts causing environmental pollution in Vietnam.**

In recent years, Vietnam has had cases of severely environmental pollution carried out by legal entities. However, the criminal law did not stipulate criminal liability to the juridical person. Hence, the juridical persons were only administratively sanctioned and had to compensate for the damage caused by their acts of causing environmental pollution. While the level of administrative sanctions is not enough to punish, deter and prevent criminals, the settlement of the liability for damages has not been implemented comprehensively and satisfactorily and commensurate with the damages caused by legal entities to society and citizens yet.

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<sup>19</sup>Tran Thang Loi, *Legal responsibility for the environment in a number of countries*, Journal of Legislative Studies, No. 3, 3/2004.

<sup>20</sup>Tran Thang Loi, *Legal responsibility for the environment in a number of countries*, Journal of Legislative Studies, No. 3, 3/2004.

<sup>21</sup>DinhBich Ha (2007), *Criminal Code of the People's Republic of China*, translation, Justice Publishing House, Hanoi.

<sup>22</sup>Hanoi Law University (2011), *Criminal Code of the Federal Republic of Germany*, translation, People's Public Security Publishing House, Hanoi.

The following cases can be considered typical examples of the argument above: the case of Formosa Ha Tinh Limited Liability Company causing environmental pollution in 04 central provinces from Ha Tinh to ThuaThien Hue province in April 2016; the case of Royal Investment Joint Stock Company in Khoai Chau district, Hung Yen province about emissions pollution of this Company in October 2017; The case of HoaBinh Sugar Joint Stock Company discharging untreated waste to the Buoi River in My commune, Lac Son district, HoaBinh province in 2016 or the Vedan MSG company causing environmental pollution on ThiVai river (Dong Nai province) <sup>23</sup>. The above cases' handling and resolution show the complicated and severe developments of environmental pollution in production and business affecting to people's lives. Also, enterprises often deny their responsibility or inadequate compensation. Furthermore, it can be clearly seen through the above cases that a common feature as well as a concerned issue is that most disputes and complaints about compensation for environmental damage are resolved through negotiation and agreement. That's why it is difficult to determine specific damage; Compensatory damages are mainly damages related to health, physical assets, and the natural environment such as the death of fish in the river, sea, dead crops, trees, etc. which have not been settled because it is difficult to prove. Besides, the fact also shows that the compensatory problem only stops at the compensation of property damage. The restoration and remediation of the consequences caused by pollution and environmental destruction have not been completely implemented, which can cause many consequences on humans and ecosystems.

Up to now, it has been more than two years since the introduction of criminal liability for commercial criminals. As information given from the Ministry of Justice, no commercial legal entity has been prosecuted. According to criminal proceedings, state agencies still only apply administrative responsibilities in handling legal entities that commit violations although they satisfy the elements constituting the juridical person's crime have happened a lot, including the acts of causing environmental pollution. Specifically, at present, the government has issued Decree 155/2016<sup>24</sup> on administrative sanctions in the field of environmental protection. Although, this decree has enhanced the framework and level of sanctions as well as added other stricter measures such as forced shutdown in addition to compensation, remediation<sup>25</sup>, more clearly defined roles and responsibilities of each state agency concerning environmental performance, the above decree along with several other legal documents in the field of the environment has more or less overlap, makes it challenging to resolve violations. Particular, according to the law on inspection and examination, most of the inspection teams must notify the subject of the inspection<sup>26</sup> and at least 15 days prior to each inspection<sup>27</sup> (except for irregular administrative inspectors, even in the case of unannounced inspection, the law has not built a clear legal corridor on the order and procedures for the unannounced inspection).

According to our research, this general intangibility has created chances and loopholes for violators to have conditions and time to overcome or use professional measures to conceal their illegal acts although the Law on Inspection 2010 and Decree 86/2011 guiding the Law on Inspection implementation has provisions for transferring records of cases with criminal signs to prosecute criminal cases<sup>28</sup>. Thus, a huge question arises why there have been no cases related to sanctioning environmental criminals against legal entities so far though the 2015 criminal code has created a Full legal and sanctioning framework for the criminal handling of legal entities causing environmental pollution in particular and environmental crimes in general. The current legal entities have a lot of business tricks and many ways to avoid obligations and mitigate the nature of their violations. To illustrate, if a legal entity is in danger of showing signs of environmental crimes following the Criminal Code, with the current regulations on inspection, it will be complicated for the Inspection agency to synthesize evidence to prosecute criminal cases on environmental crimes, which is the current general situation. We find that some problems and shortcomings make the criminal handling of legal entities causing environmental pollution cannot be implemented from this situation. Detail:

First, it is difficult to determine damages caused by environmental pollution in some cases. To determine the damage, the competent agency has to hire a damage assessment organization, which is costly and time-consuming, but not every case can accurately determine the specific damage even cases with the damage does not appear immediately, but to sequelae for generations to come. Whereas applicable law states, claims for damages are accepted only when there is actual damage, and the claimant must prove such damages.

<sup>23</sup>Institute of Legal Science - Ministry of Justice (2019), Legal issues in determining liability for compensation due to environmental pollution in business activities in Vietnam, Scientific research topic ministry level, Hanoi.

<sup>24</sup>Decree 155/2016 provides for the sanctioning of administrative violations in the field of environmental protection.

<sup>25</sup>Clause 1, Article 9 of Decree 155/2016 stipulates the sanctioning of administrative violations in the field of environmental protection.

<sup>26</sup>Clause 1, Article 25 of Decree 86/2011 guides the implementation of the Law on Inspection.

<sup>27</sup>Clause 1, Article 26 of Decree 86/2011 guides the implementation of the Law on Inspection.

<sup>28</sup>Section 4 of Decree 86/2011 guides the implementation of the Law on Inspection.

Therefore, people affected by acts of environmental pollution - mainly people living in suburbs and rural areas- are unlikely to implement the above requirements to receive compensation entire damages.

Second, the law's provisions on compensation measures in the criminal sector have not yet really shown the strict coercion as the nature of a kind of criminal coercive measure. Nevertheless, no legal entity has been criminalized and applied measures to compensate for the damage caused by the acts of causing environmental pollution, in particular up to the present time. And for other crimes in general, this legal problem will also make the application of compensation measure in reality lot less feasible.

Third, how the imposition's a penalty of permanent suspension on entities being legal entities will be affected to the determination of the damage compensation liability to the aggrieved party. Because when the legal person is applied, no longer will this penalty exist, so the aggrieved party does not have the object to claim compensation any longer. The current law also has no specific guidance in this case, while the 2015 Penal Code and the 2015 Criminal Procedure Code only regulate the content and order of execution. In addition, in some cases, it is complicated to apply the penalty of permanent suspension to legal entities that are essential state organs because it will seriously affect to the operation of the State in the country fields in which that juridical person is performing its duties assigned by the State.

Fourth, the proceedings on the obligation to prove damages have not been are not flexible yet, which makes it difficult to determine the damage in reality, and affect to the determination of criminal liability due to the act of pollution. The legal entity's environment caused by a consequence of damage is a mandatory sign of this criminal constituent. Also, due to the burden of the obligation to prove the damage of the proceeding agency and of the aggrieved party (most of them are the poor), compensation for the people is almost impossible to perform in practice. In addition, one of the reasons for those who do not use the right to claim damages in case damage caused by environmental pollution is that they are not aware of legal provisions related to their rights and interests. They believe that making legal requirements is up to the authorities and not their job.

#### **V. Several solutions to improve the efficiency of handling environmental crimes caused by legal entities.**

In order to determine the damage caused by the act of causing environmental pollution of the juridical person, and to criminally prosecute the legal entity that causes environmental pollution, based on Legislative experience of countries around the world, on the basis of pointing out the problems that exist in practice, we think that the following solutions are needed:

In terms of the law, while still stipulating that compensation is a judicial measure in the Criminal Code, lawmakers are to stipulate damages that reflect a type's nature. Judicial measures with high coercive and deterrent qualities. At present, the implementation of the principles, content, and determination of the level of compensation during the trial of the case must be based on the provisions of the Civil Code. Besides, we believe that the Criminal Code should add the content "the settlement of damages in this Code must comply with the provisions of the current Civil Code" in Article 48 to better understanding and consistent application.

Regarding criminal proceedings, for proof of damage as a basis for determining the amount of compensation, the law should set the direction, just prove that the juridical person's criminal acts have enough the condition of a claim for not necessary to prove the damage. In addition, the competent authority should continue improving the provisions of the law on criminal judgment execution. It is necessary to prescribe the order and procedures to implement judicial measures being applicable to commercial legal entities. Offenses following the scope of regulation in article 1 of the law on criminal judgment execution. From my point of view, criminal judgment enforcement to commercial legal entities is an entirely new issue, especially enforcement of criminal enforcement measures against criminals with no precedent, no experience—practice in the application and implementation process. Therefore, the study and review of the procedures for implementing these measures are necessary to ensure practical judgment enforcement activities and ensure lawmakers' purposes when regulating them in the Criminal Code.

Regarding the law's application, the State needs to have more specific guidance on applying sanctions if the legal entity is imposed a penalty of permanent suspension. Besides, in order for criminal enforcement measures to be deterrent to legal entities, it is thought that the content of these measures should also focus on benefits in the direction that the penalty must always be higher than the benefit level by the violation. We agree with the view that it is necessary to transfer the proceeds from illicit benefits from infringing activities and fines those legal entities into the state budget to solve the consequences of handling Criminals against legal entities.

This helps the law deter and prevent violations from happening, especially for individuals who take advantage of the non-criminal handling of legal entities to form one-to-one limited liability companies to benefit from exploiting and destroying the environment<sup>29</sup>.

Regarding the treatment of legal entities, based on the Polluter pays principle regulated by Clause 3, Article 63 of the 2013 Constitution, it is essential to firmly and resolutely force the legal entity to act polluting or Environmental pollution must take responsibility directly for compensating for damages and overcoming arising consequences from their criminal acts. The 2015 Penal Code has defined two new judicial measures to restore the original state and forced to take some measures to overcome. And to prevent the consequences from occurring, it is very important to force legal entities to be accountable for dealing with the consequences of damage, not just subject to punishment or compensation. This will avoid the situation that the State has to stand out to handle, solve and overcome the environmental pollution caused by legal entities in the past time. Besides, to solve this problem more thoroughly, in our opinion, the State should stand out, or give the statutory body a system related to "environmental insurance". The purpose is that when enterprises register their business activities in related industries that have potential risks of causing environmental pollution, they are required to buy environmental insurance. This will ensure the people's interests in the event of a legal entity that causes environmental damage but tries to deny the responsibility or declare law enforcement to avoid its obligations. In such cases, the insurer will have to act as the substitute to compensate for the damage.

To continue to improve legal policies on environmental protection in general and legal ones on determining responsibility for compensation for environmental damages in particular. As analyzed and mentioned above, the development and synchronization of legal provisions on damages are significant, including the rules of administrative law, civil law, and criminal law. In the authors' opinion, lawmakers should research and consider building a separate legal document on "Compensation for environmental damage." This document must cover, unify and create synchronization as well as develop sanctions to be flexibly applied in dealing with behaviors that cause severe environmental consequences such as plant incidents Formosa 2016 has caused.<sup>30</sup>

Besides, the State needs to ensure adequate investment in environmental monitoring systems. These scientific research facilities are eligible to test and examine samples, and at the same time, take measures to force industrial zones, export processing zones, enterprises that install and operate environmental treatment systems. Currently, many places have not thoughtfully implemented this requirement even when installed of operation is still taking place to only deal with managers organ to minimize costs.

In summary, in the current context, when the 2015 Penal Code has just officially taken effect, the feasibility and effectiveness of the handling of criminals in general and criminal offenses are considered. Polluting the environment, in particular, is more urgent and practical than ever. The State needs more legal instruments to properly handle cases and ensure the handling of crimes committed by legal entities, thereby preventing polluting acts of existing legal entities each day threatens the environment, health, lives, and property of people.

## Vi. Conclusion

Environmental pollution is a global problem that has threatened the purity of the environment and affects people's lives. The development of modern science and technology has brought about consequences that directly have effects on the environment. The participation of many individuals and organizations in production and business activities in various forms has caused severe environmental pollution.

Based on the research on the issue of compensation for damages caused by the act of causing environmental pollution of legal entities, the article has clarified the following issues:

*Firstly*, the article has analyzed the juridical person's criminal liability issues according to the traditional point of view and the modern perspective. That countries impose criminal liability on the juridical person has to stipulate the crimes. Which offenses for which legal persons are subject to criminal liability, including environmental crimes? Vietnam is the latest country that has defined legal entities' criminal liability for several specific criminal groups, including environmental crimes.

*Secondly*, the article has mentioned countries around the world that have very early criminal liability regulations.

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<sup>29</sup>Bui Xuan Phai, Penal liability for legal entities, Policy Bulletin (Natural Resources, Environment, Sustainable Development), Center for People and Nature, No. 19, Quarter II / 2015, page 11

<sup>30</sup> See <https://tuoitre.vn/formosa-dung-dau-cac-vu-gay-o-nhiem-nam-2016-1351267.htm>



The manner of prescribing the specific measures taken by a juridical person, although there are differences in name and type, generally includes types of penalties and other criminal coercive measures and penalties for being flexibly applied to offenders based on the criminal handling measures for criminal juridical persons. That can be seen that compensation for damage caused by the act of the juridical person to environmental pollution is also mentioned and regulated in the countries' laws. Compensation for damages is also a measure applied to legal entities committing crimes in certain criminal groups which cause certain damages such as physical damage, mental damage.

*Thirdly*, the provision of criminal liability measures for legal entities that cause environmental pollution is also a particular importance, especially in the current context, under the Industrial Revolution's impact 4.0. The violations are becoming more and more sophisticated, blatant, legal entities have knowledge of the law and use high-tech equipment to commit crimes, so it will be challenging to detect and handle. In recent years, Vietnam has become a fertile land for domestic and foreign legal entities to commit acts of causing environmental pollution with a solemn nature and severity because there are no regulations on criminal liability of legal entities. Therefore, the provision of legal liability for environmental crimes is essential. Besides, because of the heavy damages caused by the act of causing environmental pollution of the juridical person, the regulation and determination of the form and level of compensation also need to ensure effective violation management. However, specific problems and shortcomings cannot be avoided in reality.

*To sum up*, the study of compensation for damage caused by the act of causing environmental pollution of the legal entity is also aimed at finding immediate solutions to overcome the consequences of damage caused by acts of environmental pollution. In the long term, the criminal law of Vietnam and other countries in the world need to study feasible and synchronous solutions to deal with legal criminals that cause environmental pollution. With all mentioned above, countries need more legal tools to handle cases properly and ensure the handling of crimes committed by legal entities, thereby preventing polluting acts of Legal entities that are threatening the environment, health, lives, and property of our people every day.

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