

MANDATORY LEGAL MEASURES TO REMEDIATE ENVIRONMENTAL POLLUTION: A QUANTITATIVE STUDY FROM VIETNAM

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Abstract: Vietnam is identified as one of the countries most severely affected by climate change. Proactively addressing climate change is paramount in determining the country's sustainable development. This necessitates both government agencies and the community to promote economic development while concurrently protecting the environment to adapt to climate change. To achieve this, the Vietnamese government has enacted various legal regulations to raise awareness among economic development stakeholders about the importance of environmental protection. One of the punitive measures the government imposes on entities impacting the environment is the "mandatory remediation of environmental pollution." However, this regulation still contains many unharmonised provisions, leading to difficulties in practical application. Therefore, employing methods such as legal comparative studies and analysis of legislative writing, the authors will delve into the issue, identifying shortcomings and proposing relevant recommendations regarding the "mandatory remediation of environmental pollution" measure in the future.

Keywords: environmental protection, administrative sanction, remediation of consequences.

1. INTRODUCTION

The objective of promoting sustainable economic development, closely linked with environmental protection, is a central focus for many countries. Statistics from the World Bank indicate that environmental pollution can lead to economic repercussions for Vietnam. Specifically, the current water pollution situation could result in a 3.5% decrease in Vietnam's GDP by the year 2035. Regarding characteristics, Vietnam is among the countries most severely impacted by climate change. Projections suggest that environmental pollution-induced changes could cause up to an 11% GDP loss for Vietnam by 2030 (Ngoc Hien, 2019). With the aim of economic development, while ensuring the quality of the living environment, Vietnam has enacted various laws to achieve this goal. These include the Environmental Protection Law of 2020, the Water Resources Law, the Biodiversity Law, and the Law on Handling of Administrative Violations, amended in 2012 and supplemented in 2020, along with related guiding documents.

Accordingly, "administrative sanctions are one of the effective tools serving environmental protection efforts and enhancing green development. In the spirit of the Law on Handling of Administrative Violations amended in 2012 and supplemented in 2020, it is observed that the state has measures to restore ecosystems through mandatory remediation actions to address the consequences of environmental pollution. This measure is applied to organisations and individuals who violate administrative regulations related to actions causing environmental pollution" (Nguyen Canh Hop, 2017). Based on the Law on Handling of Administrative Violations, several decrees have been issued in various regulated areas concerning applying mandatory remediation measures for actions resulting in environmental consequences. However, these documents lack uniformity, leading to difficulties in understanding and enforcing mandatory measures related to the remediation of consequences of environmental pollution.



2. RESEARCH METHODS

Exploratory research method

The author group employs exploratory research methods to elucidate the issue concerning the administrative sanction mechanism in the environmental domain. This method entails explaining the significance of the environment and providing guidance on the administrative sanction mechanism within the environmental sphere. It serves as a foundational approach aimed at comprehensively addressing the issue before delving into its specific aspects through analysis.

Analytical method

The analytical method is consistently employed throughout the entirety of the article, particularly when conducting evaluations of the operational mechanisms concerning administrative sanctions for environmental violations in Vietnam.

Comparative method

In this research article, the author group has employed the comparative method to comparatively examine contents related to the institutional frameworks and legal policy development in the field of economic development among different countries. Through this approach, the author group can evaluate the analysed issues objectively. Based on the findings of this research, the author group will draw upon the experiences to establish a foundation for recommending amendments and improvements to relevant legal provisions to state authorities.

3. THE CURRENT STATUS OF LEGISLATION REGARDING MEASURES TO REMEDY CONSEQUENCES AND ENFORCE REMEDIATION OF ENVIRONMENTAL POLLUTION SITUATIONS

Regarding environmental protection mechanisms, legislators have issued numerous documents to regulate issues related to mandatory measures for the remediation of environmental pollution in various legal texts. However, several issues persist around this mechanism that require clarification and resolution, such as:

Firstly, the legal framework regarding administrative sanctions still lacks consistency in the terminology related to remedial measures for consequences. Specifically, Section C, Clause 1 of Article 28 of the Law on Handling Administrative Violations, amended in 2012 and supplemented in 2020, uses the phrase "mandatory implementation of measures to remedy environmental pollution and disease transmission." However, Article 31 uses the phrase "mandatory remediation of environmental pollution and disease transmission." This discrepancy has resulted in various phrases for this measure being used in different legal documents regulating issues related to administrative sanction in various fields. For example, Section d, Clause 1 of Article 12 of Decree 45/2022/ND-CP on administrative sanction in the environmental protection field stipulates that the act of "not immediately ceasing the operation of waste treatment trial projects or failing to timely report to the competent environmental licensing authority, state authorities in case of environmental incidents or pollution will be subject to administrative sanction." Furthermore, competent authorities may apply the measure "mandatory implementation of measures to remedy environmental pollution" according to Clause 5 of Article 12 of Decree 45/2022/ND-CP. However, for the act of "not fully implementing preventive measures against environmental pollution as identified in mineral exploration projects, causing environmental pollution during the exploration process," Article 34 of Decree 36/2020/ND-CP on administrative sanction in the water resources and mineral sector stipulates that competent authorities will apply the measure "mandatory full implementation of measures to remedy environmental pollution." Additionally, based on Article 30 of Decree 14/2021/ND-CP, for violations related to emissions in livestock farming activities, competent authorities will apply the measure "mandatory implementation of measures to remedy environmental pollution." It is noted that all three legal documents refer to remedial measures for actions causing environmental pollution as regulated by the Law on Handling Administrative Violations. However, the usage of the term for remedial measures in legal documents is not consistent. This inconsistency may pose challenges for the practical application of the law in the current period.

Secondly, the Law on Handling Administrative Violations amended in 2012 and supplemented in 2020 stipulates 9 remedial measures for the violation such as: "Forcing restoration to the original state;



compelling the dismantling of construction works or parts of construction works built without permits or not in accordance with permits; obliging the implementation of measures to remedy environmental pollution and disease transmission; compelling removal from the territory of the Socialist Republic of Vietnam or re-exporting goods, items, or vehicles; forcing the destruction of goods, items harmful to human health, livestock, crops, and the environment, as well as cultural products containing harmful content; compelling correction of false information or confusion; compelling the elimination of violations on goods, packaging, business vehicles, and items; forcing the recovery of products, goods without quality assurance; compelling the return of unlawful benefits obtained from administrative violations or compelling the return of the value of confiscated goods, vehicles, or items that have been consumed, smuggled, or destroyed contrary to legal provisions" (Article 28 of the Law on Handling of Administrative Violations amended in 2012 and supplemented in 2020).

However, it is observed that there are still cases where subordinate documents under the law proactively expand the scope of the law. For example, Article 41 of Decree 36/2020/ND-CP stipulates sanctions for administrative violations in the field of water resources and minerals, stating that competent authorities will impose fines "for cases of exploitation exceeding the permitted annual extraction capacity by 15% to under 25%, and at the same time apply remedial measures." Additionally, competent authorities have the right to "compel the implementation of measures to renovate environmental protection works, remedy environmental pollution, repair damaged technical infrastructure caused by excessive exploitation, and require payment of expenses for appraisal, examination, and measurement." Meanwhile, the Law on Handling Administrative Violations, amended in 2012 and supplemented in 2020, specifies remedial measures as stated in Article 41 of Decree 36/2020/ND-CP. Therefore, when applying these provisions, the competent authorities encounter difficulties. To date, the regulatory documents in the environmental sector have yet to specifically adjust the remedial measures: Compelling the implementation of measures to renovate environmental protection works, including which measures, as well as how to apply them in practice.

Thirdly, the current regulations governing the implementation of remedial measures to address environmental pollution have not yet clarified their content. This leads to confusion with the remedial measure of restoring the original state of administrative violations. In terms of content, "the remedial measure of restoring the original state is applied to remedy the consequences of the subject's impact on the environment while returning the environment to its original state as it was before the administrative violation occurred." Meanwhile, "the measure of compelling the implementation of remedial measures to address environmental pollution aims to remedy the pollution consequences caused by the subject's violations in the environmental sector. Analysing the issue in terms of its nature, it can be seen that both measures, whether compelling the restoration of the original state or compelling the implementation of remedial measures to address environmental pollution, ultimately aim to restore the original state that was altered by the administrative violation" (Truong Tu Phuoc, 2019).

However, there still exist certain differences between these two measures. Specifically, legal practitioners need to differentiate whether the subject's administrative violation has caused damage to the environment. If the violation has altered the original state but does not harm or have consequences for the environment, then the competent authority only needs to apply the measure of restoring the original state. For example, actions such as "laying pipelines or cables across rivers, streams, canals, ditches, or placing cages, rafts that do not meet flood prevention standards, and other relevant technical requirements as stipulated by law, obstructing the flow" violate the provisions of Clause 2, Article 25 of Decree 36/2020/ND-CP on administrative sanction in the field of water resources and minerals. These actions have also altered the original state. Therefore, such actions should be subject to the measure of remedying the consequences as stipulated in Clause 9, Article 25 of Decree 36/2020/ND-CP. This is reasonable because the actions do not cause environmental pollution.

Conversely, if the violation results in environmental pollution, the competent authority needs to apply the measure of compelling the implementation of remedial measures for environmental



pollution instead of restoring the original state. For example, Article 5 of Decree No. 132/2015/ND-CP on administrative sanction in inland waterway transport (now expired) stipulated that the act of "dumping waste into inland waterways, port areas, inland waterway terminals shall be subject to the measure of remedying the consequences by restoring the original state." However, there are still various opinions suggesting that the measure of compelling the implementation of remedial measures for environmental pollution should be applied to these acts that cause environmental pollution. Although Clause 7 of Decree 45/2022/ND-CP has adjusted towards allowing the application of the measure of remedying the consequences by restoring the original state in cases where environmental pollution occurs, the competent authority still encounters difficulties as the law does not clearly specify which sanction for remedying the consequences will be applied to the violations. The application depends on the subject of the sanctioning authority. Since these two measures have not been clearly defined in the explanatory provisions, the application of the law still lacks consistency. Fourthly, there are multiple different legal documents regulating the same violation and the form of remedial measures. Therefore, there is inconsistency in legal regulations. Specifically, Clause 2 of Article 25 of Decree No. 45/2022/ND-CP stipulates that the act of "dumping, disposing, or littering waste on sidewalks, roadways, or into urban sewage systems or surface water drainage systems; discharging wastewater improperly onto sidewalks or roadways; disposing of plastic waste generated from daily activities into lakes, canals, rivers, streams, or seas" shall be subject to the remedial measure for environmental pollution if such acts cause environmental harm. However, Clause 4 of Article 12 of Decree No. 100/2019/ND-CP also regulates the act of "littering on roadsides in improper places," which shall be subject to the remedial measure of "required cleanup of the litter and restoration of the original state that has been altered due to the administrative violation." These two decrees both address the issue of littering on sidewalks, indicating an overlap in legal regulation between the two decrees. Furthermore, there is inconsistency in the nature of the remedial measures for the same violation. While Decree No. 45/2022/ND-CP obliges the perpetrator of the violation to "implement measures to remedy environmental pollution," Decree No. 100/2019/ND-CP requires the offender to "clean up the litter and restore the original state that has been altered due to the administrative violation." Therefore, the question arises as to whether both remedial measures in this matter are independent or whether only one remedial measure is inherent in nature.

Fifthly, many administrative violations result in environmental pollution, yet the authorities responsible for enforcement often cannot require the violators to implement remedial measures for environmental pollution. For example, Clause 2 of Article 15 of Decree No. 162/2018/ND-CP on administrative sanction in the field of civil aviation stipulates that for the act of "not applying measures to prevent the emission of dust, the dropping of solid waste, and liquid waste during the collection and transportation of waste," the violator is not subject to additional sanction in the form of remedial measures. However, this violation may lead to dust emission or the dropping of solid and liquid waste, which can result in environmental pollution. Nevertheless, Decree No. 162/2018/ND-CP does not regulate the remedial measures for this behaviour.

In addition, there are certain behaviours similar to those regulated by Clause 4 of Article 11 of Decree No. 36/2020/ND-CP, which governs administrative sanction in the field of water resources and minerals. These behaviours involve using wastewater, dirty water, water containing oil, grease, hazardous chemicals, or additives containing pollutants as drilling fluids or in drilling fluid mixing and injection into wellbores. Although these actions cause environmental pollution, they are only subject to fines ranging from 20,000,000 to 30,000,000 Vietnamese dong. For such behaviours, lawmakers argue that remedial measures are not necessary to be imposed because the actions do not cause pollution to the groundwater source. Additionally, behaviours related to personal hygiene (urination, defecation) in inappropriate places such as residential areas, commercial areas, or public places are addressed in Clause B of Article 1 of Decree No. 45/2022/ND-CP, which specifies only administrative sanction without the application of remedial measures for such conduct. In connection with this issue, many argue that behaviours related to personal hygiene constitute a group of actions that cause environmental pollution. Therefore, besides administrative sanction, remedial measures should also be applied to enforce the remediation of environmental pollution resulting from these behaviours.



Sixthly, the arrangement of law enforcement with the imposition of measures to remedy environmental pollution faces numerous challenges. This is because the Law on Administrative Violations, amended in 2012 and supplemented in 2020, along with the guiding documents for its implementation, do not specify the enforcement mechanism for mandatory remedial measures. Furthermore, the law still lacks specific provisions regarding the methods, procedures, and deadlines for implementing these measures. In practice, the competent authorities cannot be certain whether the specific measures taken by violators can effectively remedy environmental pollution (Pham Minh Khuong, 2020). Moreover, the lack of clarity and specificity regarding procedures and implementation deadlines also pose barriers to applying these remedial measures.

4. THE RECOMMENDATION TO IMPROVE THE LEGISLATION ON ENFORCEMENT MEASURES FOR REMEDYING THE CONSEQUENCES AND IMPLEMENTING REMEDIAL ACTIONS FOR ENVIRONMENT POLLUTION

In the context of climate change, the world is moving towards sustainable economic development, where environmental protection is considered a crucial guiding principle to promote green economic growth. In addition to mechanisms for imposing administrative sanctions on activities that threaten the environment, remedial measures for actions causing environmental pollution by the violators themselves need to be promoted. This will play a significant role in prevention efforts as well as actively addressing environmental pollution issues. To achieve sustainable and green economic development, as well as ensuring effectiveness and consistency in the application of remedial measures in the environmental sector, the authors suggest that legislative amendments should be made to:

- (i) Legislators need to make legal adjustments to ensure consistency among provisions in the law. Specifically, legislators should amend Article 31 of the Law on Handling Administrative Violations to align with the provision in point c, clause 1 of Article 28, which stipulates the remedial measure of "requiring the implementation of measures to remedy environmental pollution". This also implies that Article 5 and Article 12 of Decree No. 45/2022/ND-CP, Article 34 of Decree No. 36/2020/ND-CP, and Article 30 of Decree No. 14/2021/ND-CP should be revised to align with the provisions of Law on Handling Administrative Violations.
- (ii) Reviewing the documents regulating issues related to environmental, natural resource-related sanctions... concerning remedial measures is necessary to ensure that the provisions of these documents are consistent with those of the Law on Handling Administrative Violations. Specifically, the measures requiring the implementation of remedial actions, such as rehabilitating environmental protection works, addressing environmental pollution, and repairing technical infrastructure damaged by overexploitation, as stipulated in Article 41 of Decree No. 36/2020/ND-CP, need to be adjusted to align with Article 28 of the Law on Handling Administrative Violations amended and supplemented in 2020. As this is a specific measure in the field of water resources and minerals, the competent authorities need to issue specific guidelines related to these remedial measures. Additionally, from a legislative drafting perspective, the measure requiring the implementation of remedies for environmental pollution is understood as a mandatory and coercive method if violators do not comply. Therefore, in documents regarding sanctions in the environmental protection field, legislators should use precise terminology without ambiguity. This also means that for remedial measures, requiring violators who impact environmental pollution to comply strictly is imperative. Therefore, legislators should refrain from using terms such as "adequate" and insert the precise name of this remedial measure into the text instead.
- (iii) The law needs to include provisions clarifying the terminology to elucidate the essence of the measure requiring the implementation of remedial actions for environmental pollution and the measure mandating restoration to the original state. In some cases, these measures may be similar in nature. However, it is necessary to determine whether the violation impacts the environment. If it does cause environmental harm, it requires the violator to implement the measure for remedying environmental pollution instead of being confused with the measure for restoration to the original state, as is the case currently.

(iv) It is necessary to specify the behaviour of "disposing of, dumping, or discarding waste on sidewalks, roadsides, or into urban wastewater systems or surface water drainage systems; discharging wastewater improperly on sidewalks or roadways; disposing of plastic waste generated from daily activities into lakes, canals, rivers, streams, or seas" in the legal document directly regulating this issue, which is Decree 45/2022/NĐ-CP, instead of Decree No. 100/2019/NĐ-CP. This overlap leads to lack of precision and uniformity in applying laws across different regions. The reason is that the remedial measures for the same behaviour differ between the two documents. Additionally, the Law on Handling Administrative Violations amended in 2012 and supplemented in 2020, along with its guiding documents, need to incorporate provisions regarding enforcing coercive measures for implementing remedial actions. Specifically, the methods, procedures, and timeframes for implementing remedial measures should be clearly defined to ensure fair, democratic, objective, and consistent application.

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