

**SOME RECOMMENDATIONS TO IMPROVE THE EFFECTIVENESS OF LAW ENFORCEMENT ON COMPENSATION FOR DAMAGE CAUSED BY ENTERPRISES' ACTS OF POLLUTING THE WATER ENVIRONMENT**

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**ABSTRACT**

Compensation for damage caused by enterprises' acts of polluting the water environment is a specific civil liability that enterprises must bear when they commit acts of polluting the water environment. Water pollution is becoming more and more serious in Vietnam, especially when enterprises discharge the untreated waste into rivers, lakes and seas, the requirements to ensure effective enforcement of the law on compensation for damage are increasingly urgent. The article proposes some recommendations to improve the effectiveness of Vietnam's law enforcement on compensation for damage caused by acts of polluting the water environment in particular, and more broadly, acts of causing environmental pollution in general when Vietnam is proactively and actively participating in the Fourth Industrial Revolution, meeting the requirements of building a digital economy and an eco-friendly economy.

**Key Words:** Law enforcement, compensation for damages, environmental pollution, enterprises.

**1. INTRODUCTION**

The law on compensation for damage of enterprises that pollute the water environment is an important and notable issue in the process of building a strong economy of Vietnam. For a sustainable economy, environmental protection is also a top concern because the environment not only affects businesses but also people's lives. Although the law on compensation for damage caused by polluting the water environment of enterprises has been stipulated in legal documents, the practical implementation of these regulations is still not effective, because factories and enterprises are still continuing to discharge waste into the environment<sup>1</sup>; the compensation between the parties has lasted for many years, even fall into a deadlock<sup>2</sup>; and the restoration of the polluted water environment is still difficult. It is possible to mention the reformation of the To Lich river, partly due to the fact that the enterprise discharges the untreated waste; many options have been proposed such as using the German product Redoxy3C to clean the water, or take water from the Red River, West Lake to create a flow to wash and clean the To Lich River...but there is no really feasible solution.

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The fact that Thi Vai river has been "killed" by chemicals released from Vedan factory for 14 consecutive years is <sup>1</sup> a prominent environmental problem in Vietnam. However, after the Thi Vai River, our country still witnessed many other rivers, canals and seas suffering the same tragedy such as the pollution in Luong The Tran canal due to the seafood processing enterprises in Hoa Trung Industrial Park discharging the untreated or unsatisfactory wastewater directly into the environment.

The case of Vedan company's compensation lasted nearly two years; the oil spill at Ganh Rai Bay, Ba Ria - Vung <sup>2</sup> Tau province in September 2001 lasted for more than 6 years...

## 2. CONTENTS

### *Firstly, strengthen to popularize, educate, and raise people's awareness*

The purpose of compensation for damage caused by acts of polluting the water environment is to compensate the loss for the aggrieved party for property, life and health, but more importantly to restore the original state of the environment. Therefore, in order to improve the effectiveness of law enforcement on compensation for damage caused by acts of water pollution, the first solution is to popularize, disseminate, and educate the law on environment and the awareness of environmental protection. Especially, it is necessary to focus on compiling and providing people with documents on the status of environmental pollution, negative impacts of environmental pollution in the world, in the country, in the locality and in the residential area. With the understanding of environmental law, people who suffer damage can claim their rights by themselves. At the same time, the party that pollutes the water environment on the basis of knowledge and awareness of environmental protection will quickly and conscientiously perform its compensation responsibility.

In addition, those who have not done well in environmental protection, through popularizing, educating law, can also change their attitudes and implement better environmental protection. When individuals in society have an understanding of environmental laws and have consciousness of environmental protection, each person will develop their own standards, consciousness, ways of thinking, and take specific actions to respect the environment. Especially, it is necessary to pay attention to educating the consciousness for each citizen to always associate the task of environmental protection with economic development. This is a decisive solution in solving the problem of water pollution in craft villages. Because it is very difficult to apply the liability to compensate for the acts of causing environmental pollution or to build a wastewater treatment system in craft villages with a non-centralized production scale. Therefore, only when each villager has a sense of environmental protection, the implementation of the responsibility to compensate for damage caused by their act of polluting the water environment is actually feasible.

### *Secondly, strengthen the research and application of science and technology*

On the basis that each citizen has knowledge of the law on the environment, has a sense of environmental protection, in order for this awareness to exist in reality, it is better to strengthen the research and application of science and technology to production lines in the direction of environmental friendliness, minimizing the waste. Furthermore, wastewater treatment technology research and application must be strengthened to ensure that wastewater when discharged into the environment does not cause environmental pollution and degradation. This is a decisive solution for the implementation of the responsibility of eliminating the source of damage of the subjects that have polluted the water environment. To implement this solution, the State management agencies in charge of natural resources and environment as well as the State management agencies in charge of science and technology need to actively develop and implement the science and technology programs at the grassroots level as well as at the state level.

Enterprises, when innovating technology, applying clean production methods towards sustainable development, with less discharges causing pollution to the water environment, will also contribute to limiting environmental pollutants. Because, applying clean production methods not only limits domestic pollution but also reduces production costs, prices and improves the competitiveness of products, protects the environment...

### *Thirdly, strengthen the State management*

Compensation for damage caused by acts of polluting the water environment is a content of civil law, but due to the specificity of acts of polluting the water environment with great damage and wide influence, so State management have a great impact on the effectiveness of compensation. In order to strengthen State management and improve the efficiency of compensation, the competent state agencies first need to perfect the law on compensation for damage caused by acts of polluting the water environment according to the proposed recommendations as above. The improvement of the law through the addition of unclear contents and the settlement of inadequacies according to the above-mentioned contents will create a sufficient legal framework and facilitate the stakeholders in the process of applying the law.

In addition to completing the legal framework, the competent state agencies also need to strengthen the inspection, examination and strict handling of cases of violations of the law on environmental protection in general and the water environment in particular. . Special attention should be paid to the inspection and examination of the implementation of the responsibility to compensate for damage through eliminating the sources of causing damage and remedying the environment by the subjects who are responsible for compensation. Thereby, ensuring that the principle of remedying all damage is implemented in order to realize the goals of environmental protection and the sustainable development of the Party and State as well as of the United Nations.  
*Fourthly, reform and perfect financial policies*

The objective of compensation for damage in general and compensation for damage caused by acts of causing environmental pollution in particular is to remedy and compensate for the damage that occurs. Therefore, in order for this goal to be realized in reality, the financial policy in the field of environment needs to be reformed according to the principle that the subject causing environmental pollution in general and the water environment in particular must pay the costs of treatment, remedy the consequences, and restore the environment to its original state, and at the same time, the obligation of beneficiaries of natural resources and the environment is to contribute back to environmental protection. Besides, in order to effectively carry out the compensation responsibility for environmental remediation, it is necessary to socialize the environmental remediation and treatment, combine expenditures from the state budget with socialized sources to restore the environment to its original state. In which, capital must be used effectively through promoting the management roles and responsibilities of specialized state agencies.

In addition, the State management agency in charge of the environment should study the establishment of an environmental protection lawsuit support fund with the capital taken from the Vietnam Environmental Protection Fund or from the environmental protection funds of the sector or locality. This is very important for effective compensation for damage caused by acts of polluting the water environment because the Fund will support funding for activities to prove to people who have suffered damage in environmental pollution in general and water environment in particular. In the condition that our law still maintains the principle that the burden of proof belongs to the litigant, the principle of "swapping the burden of proof" has not been recognized in the law, the birth of the fund is a very great support for the victims.

*Fifthly, strengthen the international cooperation*

The legal framework on compensation for damage caused by acts of polluting the water environment of Vietnam still has certain shortcomings and inadequacies, so strengthening the international cooperation will make compensation activities more effective . Because through the exchange of information, we can learn from the experience of other countries in developing and

perfecting the law. Especially, the work of determining damage as a basis for the implementation of the compensation liability of our country is still limited, so it is very necessary to exchange and learn experiences with other countries in the world.

Besides, in order to be able to apply new technologies to ensure the fulfillment of our responsibility to eliminate sources of causing damage, treat and restore the water environment..., international cooperation is the key for us to access new technology. From there, it is possible to apply new wastewater and waste treatment technologies to protect the environment. In addition, we also need to cooperate with international organizations, international forums and related countries such as the countries of the Mekong sub-region to protect transboundary water sources, request the water environment polluter (if any) to compensate for the damage

*Sixthly, improve the quality of human resources*

Making compensation for damage caused by acts of polluting the water environment is the work of the indemnifying party and the indemnified party, but the role of state agencies and officials of state agencies is very important. Therefore, in order for compensation activities to be really effective, it is necessary to improve the quality of the staffs in state agencies in the field of environment. Accordingly, it needs to improve the professional capacity and management capacity of the staffs through training and retraining activities in both professional knowledge as well as knowledge of environmental laws. Especially, in the context of increasingly developed and modern science and technology, with many changes in the legal framework on the environment to adapt to the change of social life, the training and fostering of staffs must be fully implemented. The training can be done by organizing annual short-term courses for officials of state agencies in the field of environment. In addition, the State management agency in charge of the environment should organize the training courses on skills to identify damage caused by acts of water pollution, because identifying the damage caused by acts of polluting the water environment is very difficult job.

*Seventhly, strengthen the state apparatus organization*

Participating in the compensation for damage caused by acts of foreign environmental pollution, in addition to the indemnifying party and the indemnified party, there are many State management agencies such as People's Committees at all levels in local authorities, State management agencies in charge of natural resources and environment at central and local levels, State management agencies in charge of health at central and local levels, etc. Therefore, to the compensation for damage by acts of causing water pollution to be really effective, it is necessary for the unity and smooth coordination of all the above state agencies. Accordingly, competent state agencies need to be consolidated in the direction of unification, centralizing the focal points, overcoming the dispersion and overlapping of management functions and tasks. At the same time, State management agencies improve operational efficiency in handling compensation cases due to acts of causing water pollution through the development of inter-sectoral and inter-regional coordination regulations. In addition, we also need to create opportunities for people to directly supervise the implementation of the responsibility for compensation for damage caused by the subject causing water pollution through building a separate monitoring mechanism for people, because basically the owners of water resources are really the ones who supervise the most effective restoration and destruction of pollution sources.

*Eighthly, create pressure from society to make the water polluter quickly compensate for the damage.*

State agencies need to go into research and develop regulations that allow people to have a voice and put pressure on environmental polluters so that they quickly take responsibility and make compensation for damage due to environmental pollution. The pressure can be done by allowing the environmental protection association, the consumer protection association to launch public movements for the polluter's water pollution behavior. At the same time, it is necessary to boycott the products of these subjects if those subjects do not take responsibility and not quickly compensate for the damage. In fact, Vietnamese consumers have done this very well, which can be clearly seen in the case of Vedan Company Limited releasing waste to pollute the Thi Vai River in 2010 but they did not quickly and promptly fix the problem, compensate for the damage. Consequently, a series of supermarkets and markets in Hanoi and Ho Chi Minh City that jointly made the decision to “boycott” Vedan's products. Moreover, they will only reconsider to stop “boycott” when Vedan has fixed the problem and satisfactorily solved it for farmers.<sup>3</sup>

### 3. CONCLUSION

The practical application of the law on compensation for damage caused by acts of causing water pollution of enterprises in Vietnam today shows that there are very few cases where the damaged party chooses the method of filing a lawsuit to the Court to settle the claims for damages. The agreement becomes an appropriate method for claiming for damages due to the enterprise's behavior of polluting the water environment. The cause of this situation is mainly due to the specific factors of enterprises in Vietnam, as well as legal factors affecting the effectiveness of claiming for damages. The current legal regulations, when applied in practice, still have shortcomings and this makes it difficult to apply in practice. Therefore, the unified and synchronous completion of the law; creating the advantages for entities who are directly affected by polluted water sources caused by enterprises; empowering and providing specific instructions on the mechanism of State management agencies to initiate lawsuits, claim for damages caused by the enterprises' acts of polluting the water environment...are urgent requirements.

In addition to the orientation of perfecting the law, in the current period, economic goals need to be associated with environmental protection to ensure the sustainable development goals. Therefore, to improve the effectiveness of law enforcement on compensation for damage caused by acts of polluting the water environment of enterprises in Vietnam, it is necessary to: strengthen to popularize, educate, and raise people's awareness; strengthen the research and application of science and technology; strengthen the State management; reform and perfect financial policies; strengthen the international cooperation; improve the quality of human resources; strengthen the state apparatus organization; create pressure from society to make the water polluter quickly compensate for the damage. Moreover, the law popularization and dissemination and education need to be improved so that people can protect their legitimate rights and interests in the process of settling claims for damages as well as improving the State management in the field of environmental protection and the capacity of the staff in law enforcement, because of the fact that, environmental pollution incidents cause widespread consequences; the affected households with support from the government will be more convenient in agreeing on compensation levels and requesting enterprises to make compensation for damages on time and as committed.

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An Ha - Hoai Nam, “Consensus” to boycott Vedan, <https://dantri.com.vn/xa-hoi/dong-long-tay-chay-vedan-1281614888.htm>, accessed on August 9, 2010

In summary, the law on compensation for damage caused by acts of causing water pollution of enterprises is getting more and more perfect, but in practice, there are still many shortcomings in the implementation of these regulations, and this requires competent authorities to urgently apply measures to help law enforcement achieve rapid effectiveness. Thereby, the research contributes to improving the settlement of damage compensation disputes in the environmental field, improving the legal feasibility on compensation for damage caused by acts of polluting environment of enterprises, and ensuring the legitimate rights and interests of the people affected by the enterprise's acts of causing environmental pollution.

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