

CORPORATE SOCIAL RESPONSIBILITY ON ENVIRONMENTAL PROTECTION LAW: A VIETNAMESE PERSPECTIVE

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Abstract

Environmental protection environment is a core condition to ensure the sustainable development of all nations. In order to maintain a successful result in business activities, firms must not only make profits, but also fully implement corporate social responsibility on environmental protection, according to the perspective of sustainable development. However, due to a variety of objective and subjective factors, the implementation of corporate social responsibility on environmental preservation in Viet Nam has received insufficient attention and has encountered numerous challenges. This study aims to research and systematize current legal and theoretical issues on corporate social responsibility in terms of environmental protection in order to contribute to promoting sustainable development in general and corporate social responsibility on environmental protection in particular. Simultaneously, this study used that theoretical foundation to assess the existing situation and identify limitations and obstacles in the implementation of corporate social responsibility for environmental protection in Viet Nam in recent years. As a result, the goal of this research is to suggest ways to improve the current state of corporate social responsibility in Viet Nam with regard to environmental preservation.

Keywords: corporate social responsibility; environmental protection law; sustainable development; Viet Nam

Introduction

Corporate social responsibility (hereinafter referred to as CSR) is the commitment of the corporate to contribute to sustainable economic development, through activities to improve the quality of life of employees and their family members, the community and the whole society, in a way that benefits both the business and the overall society development (See World Business Council for Sustainable Development, 1999, 2000). It is a voluntary notion in which businesses incorporate social and environmental issues into their company operations and interactions with its stakeholders (Commission of the European Communities, 2001).

In another way, in order to achieve sustainable development, a corporate must comply with the standards on environment protection, gender equality, labor safety, equal pay, training and staff development, community development in a way that benefits the company as well as the general development of society and other social responsibilities, through the application of the Code of conduct (hereinafter referred to as CoC) and international standards such as SA8000, ISO 14000, ISO 26000 (International Organization for Standardization, 2010).

Scholars can approach CSR from economic, legal, ethical and humanistic perspective (Aupperle et al., 1985). Due to a certain limitation in scope of research, this paper only focused on analyzing the CSR from legal perspective. The legal approach has two main steps for a corporate in their best CSR practice: firstly, the corporate must ensure to strictly comply with the

legal regulations on corporate responsibilities. Secondly, in order to achieve a better level of CSR, the corporate must have their own CoC demonstrating its commitment to implement CSR in a good way. In other words, before attaining a better CSR, corporate need to ensure the minimum requirement of compliance with legal regulations on corporate responsibility. Those regulations includes: regulating competition, protecting consumers, environmental protection, safety and equality and strictly obeying the prohibitions of law on business. Among those content, CSR on environment protection has been emerging as one of the most concerned topics currently.

In Viet Nam recently, although CSR on environmental protection has been implemented by enterprises in practice, it has not yet met the requirements that suitable for sustainable development process. Shortcomings in the CSR on environment protection performances can be expressed though many aspects of non- performance, improper performance or not fulfilled performance of the minimum legal requirements in terms of CSR. Many violations of the law on environment protection has been demonstrated by enterprises such as discharging waste directly into the surroundings, fully exploiting environmental resources, not following the environmental protection processes in business operation. Furthermore, it is also indicated that the form of violations on environmental protection law have been happening variously and becoming more and more serious regarding the affecting level of living environment quality, found in some relevant studies (Luu, 2011; Mai, 2017). Especially the period of time before issuing the Penal Codes 2015, many studies have shown that there were still many environmental protection law violations of the enterprises, taken place in various kind of economic fields (Grant Thorton, 2008). It is accordingly construed that those legal breaching activities have been only referred to the breaking of “hard law” regulated by the state in the specific codes, not yet mention implementing of the “soft law” which is considered to be the main content of CSR on environmental protection and regulated by the enterprises’ CoC showing their voluntary unilateral commitment.

Research by (Aupperle et al., 1985) has analyzed the clear contrast between the tax payment to the state budget and the cost of offsetting damages to natural environment caused by enterprises. Researches and practical surveys have also shown that environmental protection law violation of enterprises, typically the direct discharge of untreated waste to the Thi Vai river of Vedan company in Viet Nam, discharge the toxic chemical waste into marine of Formosa company in the middle area of Viet Nam, the improper landfill of ordinary solid waste in Thanh Hoa province (Luu, 2011; Phenrat et al., 2018) has caused damage in excess of the tax value paid by those company.

From the evidences above, it is proved that the results of irresponsible acting or violating of CSR on environmental protection has now reached alarming levels. This is accordingly placing the “entry” requirement of the whole State, law and social forces. At present, the majority of Vietnamese businesses implicitly understand that CSR is only humanitarian and charitable activities, without being aware of the full implications of this concept. Only a handful of businesses export, the enterprise with foreign investment are aware of social responsibility adequately to voluntarily implement. The question is more than 95% of Vietnamese enterprises is now small and medium sized, which places the key role in the implementation of CSR. However, due to conflicts of interest and costs when performing CSR, the majority of Vietnamese enterprises have not yet really interested in the implementation of CSR.

Limitations and challenges in the establishment of corporate social responsibility regime for environmental protection in Viet Nam includes some certain issues. Vietnamese enterprises’ awareness and implementation are not evenly and unified. In term of the legal document system on CSR, it can be seen that the lack of specific guiding documents on CSR prevented the stakeholder to implement CSR evenly. CSR in Viet Nam needs to be legislated or oriented

effectively in State policy's management. The problem of lack of financial resources and material and technical support for businesses are amongst the reason of a poor CSR.

1. The legal basis of involving social responsibility for environmental protection of the enterprise in Viet Nam

As analyzed above, CSR also derives in nature from the requirement to comply with minimum legal regulations. Then it is possible to go beyond the minimum legal rules, which are the voluntary commitments of the business through the development of codes of conduct or the application of existing ones. Therefore, firstly, it is required that enterprises must strictly follow the legal regulation system as hard constraints serving as the basic for well implemented CSR. Besides, there are still soft constraints reflecting in voluntary enterprise commitment known as the CoC that enterprises must comply with.

Enterprises can choose an existing or build an own CSR code of conduct on environmental protection on the basis of some popular CoC, such as: the UNGC Global Agreement, the ISO 14000 and the ISO 26000. The UNGC Global Agreement concludes three principle that are referred to CSR on environmental protection: Principle 7 - Businesses should support a precautionary approach to environmental challenges; Principle 8 - Enterprises undertake initiatives to promote greater environmental responsibility; Principle 9 - Encourage businesses to develop and disseminate environmentally friendly technologies (defined in 7.8 and 9 of the Principles the global agreement the UN Global Compact). Along with that, ISO 14000 is also seen as the prescribed standards of CSR on environmental protection for businesses in a specific way, provide for not only businesses, but also any organization with requests and instructions on building an environmental management system, mainly related to the construction of an environmental pollution assessment and prevention system, and environmental management. The ISO 14000 Code of Conduct is completely voluntary for businesses in general when applied, however, governments can consider incorporating these standards into their own policies and laws.

In the field of CSR in terms of environmental protection, Viet Nam has also participated in and ratified international conventions and treaties such as: Convention on the Law of the Sea; Vienna Convention on the Protection of the Ozone Layer; Convention on the control, cross-border transport of hazardous waste and their destruction (Basel); Convention on International Trade in Endangered Species of Wild Fauna and Flora; Convention on Biological Diversity and so on.

In the spirit of such international legal rules and standards, in order to ensure the harmony of national law with international law based on the principle of respecting international commitments between countries, The Government of Viet Nam has concretized these international commitments with the provisions of national policies and laws, recognized and reflected in the legal provisions related to ensuring and enhancing CSR implementation. Detailing are as follows:

In terms of the general theoretical basis of CSR, the system of governing legal documents includes: legal documents that create corridors, general legal documents, recording the constitutional principles as well as relevant laws ensuring the implementation of CSR includes Constitution 2013; Civil Code 2015; Enterprise Law 2020; Commercial Law 2005; Investment Law 2020; Ordinance on Grassroots Democracy 2007; Criminal Code 1999, amended and supplemented in 2009; Law on handling administrative violations in 2012; Law on Civil Procedure 2004 amended and supplemented 2011; The 1999 Criminal Procedure Law, amended and supplemented in 2009; Civil code 2015, Criminal Procedure Law 2015 (amended 2017) and other documents guiding the implementation;

Regarding laws related to CSR in environmental protection, the State has issued legal documents such as the Law on Environmental Protection 2014; Law on special consumption tax in 2008; Law on environmental protection tax in 2010; Law on Environmental protection Tax 2010, Law 82/2015/QH13 dated on June 25, 2015 on natural resources and environment of sea and islands; Law 17/2012/QH13 dated on June 21, 2012 on water resources. Decree 155/2016/ND-CP dated November 18, 2016 on penalties for administrative violations against regulations on environmental protection; Decree 19/2015/ND-CP dated February 14, 2015 on detailed implementation of a number of provisions of the Law on Environmental Protection 2014; Decree 18/2015/ND-CP dated February 14, 2015 on environmental protection planning, strategic environmental assessment, assessment environmental impact and environmental protection plan; Decree 38/2015/ND-CP dated 24/4/2015 on waste and scrap management; Decree 29/2008/ND-CP dated 14 May In March 2008 of the Government on regulations on industrial zones, export processing zones and economic zones; Decree 164/2013/ND-CP dated November 12, 2013 of the Government amending and supplementing a number of provisions of the Decree 29/2008/ ND-CP dated March 14, 2008 of the Government regulating industrial zones, export processing zones and economic zones; Decree 80/2014/ND-CP dated August 6, 2014 of Government on drainage and wastewater treatment; Circular 35/2015/TT-BTNMT dated 30/06/2015 on environmental protection Economy, industrial parks, export processing zones, high-tech zones;

2. The CSR implementation for environmental protection

According to the provisions of the Law on Environmental Protection 2014, the responsibilities of enterprises in environmental protection are not specified in a specific section or group of specific laws, but only scattered in the full text of Law on environmental protection 2014.

It can be seen that CSR for environmental protection includes two main groups: group of responsibilities of enterprises in the stage of preparing to invest in production and business activities and group of responsibilities of enterprises in the operational phase until terminate operation.

Firstly, the group of responsibilities of enterprises in the stage of investment preparation in production and business activities. For this stage, in addition to the responsibility of complying with the regulations of the law on environmental protection in general, enterprises have an important responsibility, which is to develop an environmental impact assessment report (hereinafter referred to as EIA Report) or making an environmental protection plan (environmental protection plan).

For some projects, in order to be granted investment, construction and exploitation permits, the project owner must first prepare an EIA report approved by the competent State management agency. The list of projects subject to EIA report preparation is regulated by the Government (Article 18 of the Law on Environmental Protection 2014). If it is not on the list of required EIA reports, the business establishment must be responsible for planning the environmental protection and registering it with the People's Committees of districts or communes. After being approved, enterprises must base on the EIA report or the environmental protection plan to properly implement those contents throughout the production and business process. The preparation of EIA reports is specified in section 3 (from Article 18 to Article 28) of the Law on Environmental Protection 2014.

Secondly, the corporate responsibility group in the operational period until the termination of the operation. This is a group of responsibilities businesses must comply with after the EIA report or environmental protection plan has been approved. In other words, the approval of the EIA report or the Environmental Protection Plan is the last condition for enterprises to conduct

production and business activities. However, enterprises must always pay attention to operating on the basis of the approved contents of the above report or plan.

After the EIA report or environmental protection plan has been approved, enterprises are responsible for implementing the requirements of the approval decision and making explanations if the parameters and information change (Article 26, Law on Environmental Protection 2014). During operation, the responsibilities that enterprises must comply with include: The provisions of the Law on environmental protection are compulsory for all sectors participating in the environment, especially enterprises, based on article 4 on Principles of environmental protection. On participating in the legal relationship on environmental protection, enterprises are responsible for complying with the provisions of the law on environmental protection. These are general regulations, oriented, principles or foundations of environmental protection activities.

The implementation of the environmental protection measures stated in the approved EIA report and registered environmental protection plan is the responsibility of the enterprise after the EIA report or environmental protection plan is approved. Based on the EIA report or the environmental protection plan, enterprises must build measures to implement environmental protection. This includes the implementation of the main contents of the EIA report specified in Article 22 and the environmental protection plan specified in Article 30 of the Law on Environmental Protection 2014. Enterprises have the responsibility to properly and fully implement the content approved by the competent agency in the report or plan on environmental protection. Compliance with environmental standards is the responsibility of enterprises in the process of carrying out production and business activities, and must consider not to cause negative impacts beyond the limits of the parameters of ambient quality, the content of pollutants contained in the waste, technical and regulatory requirements announced by state agencies and organizations in a voluntary document form to protect the environment.

The prevention and limitation of negative impacts on the environment from the production and business activities of enterprises is reflected in practical measures that enterprises must be responsible for. That may be the construction of a waste treatment system for production and business. Or maybe domestic waste treatment system in economic zones, industrial zones, export processing zones ... In addition, it is equally important to construct the wastewater treatment system for operations and manufacturing business. The subjects include: concentrated production, business and service zones; craft village industrial zones and clusters; production, business and service establishments which are not connected with the centralized wastewater treatment system.

In the process of production and business activities, if causing environmental pollution, enterprises are responsible for applying all necessary measures to overcome the pollution, and at the same time reporting to state authorities.

Thus, the responsibilities of production, business and service establishments generally include specific groups of responsibilities: the first is the responsibility of waste disposal to not affect the quality of living environment and workers, the second is the responsibility to prevent and respond to environmental incidents, the third is the responsibility to develop and implement the environmental protection plan. In addition, for enterprises that generate a large amount of waste and have the risk of seriously affecting the environment, they must build a specialized division or environmental personnel, must have a certification of the environmental management system.

In addition, in each different field of production and business activities, enterprises have different responsibilities for environmental protection depending on the impacted subjects. For example, for enterprises operating in the field of exploitation and use of natural resources, they must be responsible for assessing the current situation, the regeneration capacity and determining

the exploitation allowable limit (Article 35). When conducting mineral exploration, mining and processing activities, there must be measures to prevent and respond to environmental incidents and fulfill the following requirements for environmental protection, renovation and restoration:

To collect and treat wastewater according to law provisions; Collect and treat solid waste according to the regulations on solid waste management; Take measures to prevent and limit the spread of dust, harmful emissions and other negative impacts on the surrounding environment; must have plans for environmental renovation and restoration and carrying out environmental renovation and restoration; environmental recovery deposit in accordance with the law (Article 38).

The obligation to pay environmental taxes as well as environmental protection fees is a compulsory budget obligation not only for any individual or organization. As an organization of production and business, the business activities of enterprises more or less will be difficult to avoid negative impacts on the environment. Therefore, paying taxes and fees will partly help offset the negative environmental impacts of businesses. However, it must be emphasized that this is only of relative significance, because as analyzed earlier, if not responsible, the consequences or damage that enterprise can cause could be many times greater compared with the budget obligations they have performed.

Current environmental taxes and fees include: Environmental protection tax (applied to products that have negative effects on the environment and human health such as gas, oil, and grease trading and kerosene); The environmental protection fee applies to enterprises whose waste discharge activities are hazardous to the environment; the type of fund extraction and recovery of resources natural (organizations and individuals exploiting natural resources must deposit a sum of money at a credit institution in Viet Nam or in a fund for environmental protection somewhere extraction); Environmental protection funds (state and provincial have financial institutions that are covered by the government and are responsible for protecting the environment from greater damage).

3. The practice implementing legal regulations related to corporate social responsibility for environmental protection in Viet Nam

In 2019, the National Environment Police Force discovered 20.319 cases violating the law on environment and natural resources with 21.194 individuals and organization violator. Accordingly, there were 16.302 cases applied the administrative sanction and 263 cases with 474 subjects transferred to investigation agencies at all levels to prosecute. The amount of fine was equal to 220.359 billion VND (Ministry of Public Security, 2019).

In term of the operation of judicial body, it can be seen that the criminal adjudication activities in the environmental field mainly focus on the individual offenders, not yet applied to enterprises as a commercial legal entity due to many different reasons.

According to the Report of the Natural Resources and Environment sector in 2019 (Ministry of Natural Resources and Environment, 2019), the Ministry of Natural Resources and Environment has assigned the Departments of Natural Resources and Environment of Binh Duong province to conduct 274 inspections and inspections of 750 organizations and individuals, including 256 inspections on the observance of the law on environmental protection of production and business establishments, 18 inspections and inspections of environment in industrial zones and clusters. The report has contributed to represent and point out the actual implementation of CSR of enterprises in the field of environmental protection.

Destroying and illegally exploiting natural resources is happening everywhere, especially forest resources. It can be seen that the violations of enterprises through business behaviors are

very diverse according to the report: the illegal trade, transporting of timber and animals in the red book of Viet Nam. This is a violation into prohibited acts specified in article 7, clause 1, 2, and 3 of the Law on Environmental Protection.

One of the prohibited acts, but businesses still do it, is to use toxic chemicals in production and business and violate the management method of those chemicals. In fact, enterprises still use and produce fertilizers, dangerous plant protection drugs, lack of sustainability in the agricultural sector. This leads to many different consequences, that is, the quality of agricultural products, the quality of living environment and safety of human health are also threatened from the above hazardous chemical sources. If businesses do not recognize and are aware of CSR, the continued purchase and sale and circulation of harmful chemicals in agricultural and forestry production in particular and the economy in general will pose a significant threat to the quality of life for both producers and consumers, even posing a threat to the health and safety of many generations.

The use and handling of these toxic chemicals are the basis for the effects that seriously degrade the quality of soil, water and air in all areas. Every year, it is estimated that the total amount of inorganic fertilizers used in agriculture is about 2.5-3.0 million tons, of which 50-70% is not absorbed by the crop, releasing to the living environment (Ministry of Natural Resources and Environment, 2019). In addition, improper handling of these chemicals is also a danger to the community and society. In reality, in Viet Nam, the existence of many plant protection drug warehouses has not been resolved yet is a common situation. Residues of plant protection drugs in general, pesticides in water, soil in particular as reported by the specialized agencies are often very high, exceeding the permitted standards.

In addition, many enterprises conduct business activities by illegally exploiting environmental resources, because they are either not licensed or licensed but still violate the contents of the granted license. The report (Ministry of Natural Resources and Environment, 2019) pointed out that the common violations related to this licensing include: mining enterprises without license (accounting for 67.65%); exploiting outside the licensed area or exploiting in excess of the permitted capacity (accounting for 2.94%); exploiting without mine design, without making mine current map (accounting for 8.82%); not fully performing the obligation of escrow to recover environment in mining (accounting for 2.94%); have no license to exploit and use water resources (accounting for 31.75%); discharging wastewater into water sources without a license (accounting for 20.63%); violating the contents of the granted license (accounting for 46.03%).

This report shows that the violation of content in the granted license accounts for 46.03%, at the highest level, which can be explained due to many different reasons. In which, on the business side, it is the irresponsible attitude and the intentional violation of the law in production and business activities. As for the State agencies side, this can be explained due to lack of the supervision capacity and excessive work pressure, as well as there has been still an overlap in the functionality of the licensing authorities.

Through inspection and examination, it was reported that 45.28% of organizations and individuals inspected violated the environment, mainly focusing on groups of behaviors such as: not performing or performing incorrectly, incomplete the contents of the approved environmental impact assessment (EIA) report and the confirmed environmental protection commitment (accounting for 34.03%); some of the enterprise even do not have either EIA or the commitment to protect the environment (accounting for 17.92%) (Ministry of Natural Resources and Environment, 2019). It is a fact that the implementation of the environmental protection measures mentioned in the approved environmental impact assessment report, the registered environmental protection plan and compliance with environmental standards have not been paid attention by enterprises, especially small and medium sized enterprises. EIA report or environmental protection plan seems to be only superficial, or just a mandatory condition for enterprises to be

granted an investment license, but once in operation already, the enterprises are not all willing to follow the commitment. The main related violations are:

Firstly, enterprises do not perform or do not correctly or fully the contents of the EIA Report or the Environmental Protection Plan, which shows that the self-compliance of enterprises is not yet exists, and the supervision and management of the competent state agencies are not yet effective enough.

Secondly, enterprises do not organize the implementation of environmental protection measures according to the approval decision of the EIA report or the environmental protection plan. Under the provisions of Article 28 and Article 34 of the Law on Environmental Protection, it is the responsibility of the agency that approves the report and the plan to review the report and issue the completion of the environmental protection work. However, in fact, due to the work pressure, without adequate fully attention, supervision and inspection of the competent state management agency, there is hardly not any enterprises voluntarily organize the implementation of environmental protection measures, especially for small and medium sized enterprises. The reason here is that enterprises have not realized the importance and significance of implementing environmental protection measures. On the other hand, enterprises believe that the construction of environmental protection works increases unnecessary costs for production and business activities. The general opinion of enterprises, especially small and medium enterprises, the cost to overcome the consequences of environmental consequences for each case will be lower and the probability will be lower than having to spend regular investment costs for the organizing the implementation of measures to protect the environment.

Thirdly, many companies encounter case to change the size, capacity, technology increases the negative impact on the MT compared to the alternatives in the EIA report or plan of environmental protection has been approved but not to the point of having to re-prepare the EIA report, still does not comply with the legal provisions on accountability to the approving agency to obtain a written approval to continue operating with such change. This is explained by many different reasons. Maybe it is because enterprises due to the limited capacity cannot see the importance of reporting for approval about the changes. Enterprises can also deliberately evade obligations as well as additional costs and time invested in the process for approval of supplements. On the other hand, this is also a fault partly due to the lack of overall and thorough management and supervision by state management agencies.

One of the most important activities to prevent and limit negative impacts on the environment is to build waste and wastewater treatment systems or to have other preventive measures and systems to limit the impacts of bad business activities of enterprises to the environment. However, many businesses still have not focused on this content.

It can be seen that pollution is mainly concentrated in urban areas, industrial zones and craft villages. In industrial zones and economic zones that do not have enough wastewater treatment systems, resulting in untreated production and domestic wastewater causing serious environmental pollution. Many industrial zones have reduced their investment in industrial park technical infrastructure including centralized wastewater collection and treatment systems. Currently, only 66% of industrial zones have wastewater treatment systems; Most of domestic wastewater in urban areas is not treated but discharged directly to the environment.

According to the statistics of the Ministry of Natural Resources and Environment, the percentage of industrial zones with concentrated wastewater treatment stations is only about 66%, many industrial zones have been put into operation but have not yet been built this category (Ministry of Natural Resources and Environment, 2019). In many places, enterprises build waste water treatment systems locally but not operating, operating inefficiently or in degradation. It is estimated that about 70% of the total of more than 1 million m³ of wastewater/day and night

generated from industrial zones is discharged directly to receiving sources without any treatment. As a result, pollution in rivers, lakes, canals and ditches subjected to wastewater from industrial zones has become severe. The water waste receiving places of industrial zones have been heavily polluted, many places the water source cannot be used for any purpose. This is a common influence in urban cities, with many economic zones and industrial parks. The quality of domestic water resources is seriously affected, leading to its consequence is diseases, especially cancer increases in some areas with severe water pollution where according to research projects of the Ministry of Natural Resources and The environment, it is called “cancer village” (VUFO-NGO Resource Centre Viet Nam, 2015).

Violation of regulations on wastewater discharge and treatment is still very common through the acts of direct discharge into the environment. Many businesses discharge wastewater in excess of environmental toxic standards and regulations. Especially the status of old industrial zones, which are polluted, because factories in these industrial parks had used outdated production technologies or had not invested in exhaust treatment systems before discharging into the environment.

According to the Report (Ministry of Natural Resources and Environment, 2019), most of the craft villages and industrial parks do not establish waste collection and treatment facilities meeting the national technical standards on environment. Survey results of 52 typical craft villages in the country showed that out of them, 46% of craft villages has been heavy environmental polluted (either air or water or soil or all three types), 27% moderately polluted and recent assessment shows that the pollution level of craft villages has not decreased but also tends to increase.

One of the main responsibilities of production and business establishments is to build solid waste and waste management and treatment systems, which requires focused and systematic and more complex regarding the treatment process. However, there are many businesses, as well as industrial parks or craft villages, that have not strictly complied with the construction of this concentrated solid waste collection and treatment system. In recent years, there have been many lawsuits by people living in the surrounding environment, known as citizen communities nearby places where businesses that are producing and trading: Vedan Company pollutes Thi Vai River (Luu, 2011), Nicotek Thanh Thai Company buried the polluting insecticide in Thanh Hoa (Phenrat et al., 2018), Formosa in Ha Tinh discharged the toxic chemical in to the sea of 4 provinces in middle area of Viet Nam. However, these cases, even though they have been handled, have not yet brought satisfaction to the community and society in the region as well as in the whole country.

The report (Ministry of Natural Resources and Environment, 2019) has indicated the rate of violation of hazardous waste management (accounting for 12.99%); discharging waste in excess of the permitted standards into the environment (accounting for 12.47%); not fully implementing the reporting regime (accounting for 18.18%); However, it can be seen in reality that this rate is still low, not a number that could be generalizes the whole picture of the current small and medium sized enterprises.

In general, inspection and inspection activities are carried out in accordance with industry plans, most businesses cooperate and coordinate with inspection teams in implementing both periodical and ad hoc inspection plans.

However, there are still some shortcomings to affect the quality of inspection work. The inspection duration has still been prolonged due to circumstances hinder or lack of cooperation from the business in the way such as providing limited documents, even destroying documents and evidence for inspection work. This fact shows many different problems. It could be either the quality of the operation of the apparatus of inspection is extremely limited, or would be a system

of sanctions serve the enforcement of the law is not convincing. Moreover, toward companies, there have been a lack of willingness to prove their responsibility. Of course, the basis of lack of volunteering also starts from the weak quality of business operations, the responsibility to protect the environment is still being forced and self-conscious.

In addition, there is still a situation where enterprises seek to avoid the responsibility of inspection and examination by other unofficial ways. This partly reflects the lack of transparency in the inspection mechanism as well as the state management agencies in general. If this situation continues, it will certainly be difficult to achieve CSR implementation.

Viet Nam has more than 1,300 recognized craft villages and other 3,200 craft villages not yet recognized, many craft villages disguised, taking the name of trade villages to avoid obligations to society, evade all fees, taxes, fees in general and fees in protecting the environment in particular, evade the sanctions on protecting the environment (Ministry of Natural Resources and Environment, 2019).

Paying the environmental protection tax and fee is one of the basic budget obligations of enterprises, especially enterprises whose production and business activities directly affect the environment. However, at present, there is a common situation that enterprises declare insufficient or even evade, owe budget obligations, even in the field of tax and protection fees.

4. Limitations and challenges in the establishment of corporate social responsibility regime for environmental protection in Viet Nam

In general speaking, Vietnamese small and medium sized enterprises' level of legal knowledge and compliance has still been limited. Vietnamese enterprise's compliance with legal regulations in the field of environment protection has not been done well, especially the implementation of CSR has not been paid much attention. Although the request for awareness and the implementation of CSR is the first basic issue for building and implementing a successful CSR regime. However, at present, not only enterprises but also many stakeholders are not fully aware of this meaning. Although the request for awareness and the implementation of CSR is the first basic issue for building and implementing a successful CSR regime. However, at present, not only enterprises but also many stakeholders are not fully aware of this meaning. In the field of environmental protection, there have been still many violations caused by enterprises causing serious environmental pollution, which are the behaviors related to the failure to implement the environmental impact assessment reports, the commitment to protect the environment, implementing environmental protection plans.

Many enterprises have still misunderstood about the concept, content and meaning of CSR. Many businesses believe that CSR is just a pure business charity and humanitarian activity. Some enterprises implement charitable activities aimed to burnish the image and brand, but still violate law on environmental protection. The responsibility to protect environment is regulated by law, enterprises' violations still tend to be more and more serious. In fact, there have been many acts of direct discharge into the environment, such as: Vedan company discharged waste, pollutes to Thi Vai river (Luu, 2011), the plant protection company Nicotex Thanh Thai buried the plant protection drug polluting the soil and water sources (Phenrat et al., 2018).

Enterprises are not proactive and determined to build a Code of Conduct in Enterprises. A part of businesses have initially implemented the building of a code of conduct for their businesses, but in fact those codes of conduct are still heavy on form and pro forma just to build the image. Such rules are only for display as a beautiful cover, but businesses still do not comply with such content. The CoC must be considered as a guideline in the business activities of enterprises, and violating that rule is contrary to the cultural values and identity of enterprises, denying themselves. On the other hand, the current violations of the corporate code of conduct are still not considered as violations of the law, due to the reason that CoC are just self-

commitment of enterprises and more importantly, because they have not governed by specific law.

The problem of lack of financial resources and material and technical support for businesses are amongst the reason of a poor CSR as a result, which is even more prominent problem of small and medium enterprises. CSR requires businesses to build for themselves not only a code of conduct but also a system of physical equipment to serve the implementation of that code of conduct. However, financial constraints as well as support from the State and other organizations are also major obstacles for businesses.

In term of the legal document system on CSR, it can be seen that on the same issue there are too many adjustment documents with low stability, while the lack of specific guiding documents that becomes difficulties for some regions and localities in implementing in accordance with legal documents. In addition, there are issues that are not timely adjusted and kept up with the requirements of the new situation. For example, the regulations on support for small and medium-sized enterprises, which have been issued since 2009 (known as Decree 56/2009/ ND-CP on assistance to the development of small and medium enterprises) to date, there have been many changes in the socio-economic situation and requirements for enterprise development. Thus, it is necessary to amend, update, and clarify the guidance and support on CSR into business operation and management; Besides, the lack of legal bases to operate such CSR stakeholders as civil organizations, non-governmental organizations, social organizations, professional social organizations and so on. Accordingly, the poor legal regulation on CSR stakeholder's role and support for enterprises makes it difficult for businesses as well as relevant agencies and organizations to take part in CSR activities effectively.

In order to extend more legal rights and duties for such above mentioned organizations to perform the function of representing and protecting legitimate rights and interests of the community, society or stakeholders, it is necessary to issue legal document clarifying their legal status. Currently, the legal basis governing this issue only has been regulated in the provisions on socio-professional organizations specified in the Civil Code 2015 and in the association's charter and regulations on organization and operation. The reality of activities in the past time shows that the quality of activities of most associations and associations is ineffective in implementing the function of protecting communities' rights. Only a few associations such as the Farmers' Union act to represent and protect the rights of farmers in the Pangasius and Basa cases as well as the Nicotex Thanh Hoa lawsuit in 2013 (Phenrat et al., 2018). Although not as expected, but at least they have performed their effective role. However, that representation is just only representing the farmer in the perspective of a supplier, not a representative of the community as a whole in the environmental protection case.

Regarding the violations of the law in the field of CSR on environmental protection, it can be seen that the sanctions system was specified in the Law on handling of administrative violations in 2012, the Criminal Law 2015, amended and supplemented in 2017 as well as in a number of other legal documents. However, the reality of violations in recent years shows that the sanctions applied are not strong enough and have not been deterrent enough, so businesses are almost "not respected". If cases like the Vedan Company, or Nicotex Thanh Thai are handled more aggressively - under criminal liability, deterrence will surely be much higher. However, at the time of these cases happened, the criminal sanctions was not be able to applied for legal entities, so Vedan and Thanh Thai were just punished with administrative handling procedure. At the same time, it also helps to consolidate trust, bringing greater satisfaction in the community and society.

Criminal institutions regulated in Chapter XIX on Environmental Crime of the Criminal Code 2015 have not been applied in practice due to some main reasons such as the limitation on the subjective characteristics of criminal offenses as legal entities which the criminal acts

described as “causing serious result” as a mandatory condition in constituting a crime. In addition, the statute of limitations for lawsuits against violations of the law on environment stipulates “two years from the time of detecting violations of the law” (Article 6, Law on handling of administrative violations in 2012), not only make times for enterprise to violate and evade responsibility, but also at the same time not protect the rights of community and population. If only applying the responsibility for administrative violations to enterprises’ law violations, the applicable sanctions problem corresponding to the specific levels of administrative violations will not be high. At present, it is still controversial that there are separation between regulations on civil damages liability and the liability for environmental damages.

Some provisions of civil law, when applied, will not be appropriate. It is a matter of compensation for damages property from environment violation. It will not be adequate and overall enough for just only compensating for damage to property value but not compensation for spiritual value damage, yet due to lack of legal basis to claim for compensation from enterprises and to determine the damage regarding spiritual value damage in Civil Code or any other specific law. While, in fact, the mental damage, or in other words, construed as the cultural and spiritual environment as a whole can be worth a huge loss, lasting for generations to come. In particular, according to the civil law, the statute of limitations for applying compensation claims is not clearly defined. This is a remarkable loophole in the law on corporate responsibility for environmental protection. If the statute of limitations for applying compensation claims is not specified, there is no basis to handle the complaint process.

Finally, regarding the law on environmental protection, the regulations of environmental infringement are still general, while it is in fact that the issue of environment is very diverse and complicated. For example, if the company has a violation on the components of the environment such as gas environment that has not been fully regulated by the specific law. Accordingly, regarding research content, the question is how will responsibility be applied? And who will sue to protect community rights?

5. Solution to enhance CSR on environmental protection regulation in Viet Nam

Firstly, It is necessary to have clearer guidance on determining the liability for damages caused by enterprises causing environmental pollution

There should be more detailed regulations guiding how to identify and distinguish damages to life, health, property and legitimate interests of individuals and organizations from environmental damages. This distinction is actually only qualitative, because damage to the environment will inevitably affect the loss of life, health, property and legitimate interests of individuals in the future. From the perspective of civil law this issue has not been taken into account, nor does the environmental protection law. Moreover, it is also very difficult to determine the consequences of damages in practice. Therefore, it is difficult to determine the compensation for damages caused by environmental pollution. Such regulations both help businesses to be responsible for their own behavior and help the community, residents or representative organizations to complain and sue more favorable in providing evidence to complain.

It is necessary to reconsider the regulations relating to statute of limitations for lawsuits on environmental violations as well as regulations on compensation for mental loss caused by violations of environmental laws Since the boundary between the violation of the administrative law on the environment and the crime of the environment is a large gap, most violations of the law on environmental protection can only be handled administratively. Although the acts and consequences of such violations are worthy of criminal penalties. However, according to the provisions of the Law on handling of administrative violations dated June 20, 2012 of the National Assembly, in Article 6, the statute of limitations for sanctioning administrative

violations on environment is 2 years. So in fact the case Nicotex Thanh Thai buried plant protection drugs in Thanh Hoa discovered in 2013, but has been conducted since 1999 should expire sanction that could be applied only the consequences remedy.

In fact, for the environmental protection law violation, it is necessary to consider the statute of limitations for initiating a lawsuit from the time the violation is discovered. If not, as in the case of Nicotex Thanh Thai, many businesses will continue to repeat such violations because it is always difficult for state agency to interfere with the internal businesses. This problem comes together with the limitation of the inspection quality activities, will be detrimental to the community resident where the environmental protection violation takes place. On the other hand, the issue of statute of limitations for suing for damages due to environmental pollution as well as the issue of compensation for damage of mental and intangible assets due to environmental protection law violations are not regulated in civil law. Therefore, there should be additional regulations on this issue.

Previously, in the 2005 Civil Code stated that “The statute of limitations for initiating lawsuits to claim damages is 2 years from the date on which the legitimate rights and interests of individuals, legal entities and other subjects are harmed.” However, realizing that the consequences of environmental pollution can be extended later, according to Article 588 of the 2015 Civil Code states that: “The statute of limitations for filing a claim for damages is 03 years from the date that the person who have the right to request know or must know that their legitimate rights and interests have been infringed upon.” Moreover, the Civil Code 2015 also stipulate the cases excluding the statute of limitations for lawsuits which are specified in article 155. Article 155 stipulates that no statute of limitations only for 4 cases including: request to protect personal rights not attached to property, request to ownership protection, disputes over land use rights and other cases provided by law. From the case of the Vedan cases and the Nicotex Thanh Thai cases as well as many other environmental protection law violations, it is necessary to construe the object of environmental protection law violation as a residential community. Obviously, this object is compromised concepts of civil law and civil procedure law mentions as a "public interest". Accordingly, all acts of infringement of "Public interest" must be considered without statute of limitations. Of course, this point of view aims to protect the right to start a lawsuit as well as in order to increase the liability of enterprises. In fact, it will be necessary to consider more solutions to extend the statute of limitations for lawsuits further but with a time limit, to ensure the issue of providing evidence and proof in the procedure proceedings.

Regarding the “public interest” known as the common object that CSR is responsible and aimed towards (along with the profit purpose of enterprise). This term has only been mentioned once in Article 160 of the Civil Code 2015) yet the concept or specific content guidance of legal documents has not been clearly explained.

It is a principle stipulated in article 160 that the property owner was entitled to perform all acts on his will towards the property without contrasting to the provisions of the law, causing damages or affecting the interests of the nation or the people, race, public interest, legitimate rights and interests of others;

In the field of CSR, the benefit of the environment as a whole is also the public benefit, which the legal basis to govern is still a gap. If these public interests are infringed, what will the order and procedures to resolve the complaint, or just apply the procedures of administrative proceedings, Civil proceedings like other claims? Due to the fact that the responsibility of the state which represented by the state management agencies is to protect the people and protect the public interests. Thus, at the same time the state is responsible for the management and maintenance of public orders to ensure stability in the social community. If the state has the responsibility to manage, protect and establish the common order, when such public interests are clearly violated, there must be another entity responsible for initiating lawsuits and claims to

protect such public interests. This subject certainly cannot be the state, so it will certainly be the responsibility of social organizations or other organization likewise. However, there have not been any stipulation related to this issue in Vietnamese legal system to provide clear guidelines for social organizations in filing a lawsuit against businesses or even the state regarding the state duty due to the public interests compromised.

Secondly, In the field of environmental protection, the General Department of Environment is considered as an agency empowered by the State in the field of implementing, managing and monitoring the environmental protection activities of all individuals and organizations in the Vietnamese territory. In fact, however, the environmental protection management apparatus still not synchronized and consistent from central to local levels, not commensurate with the assigned functions. The reason could be found is because that the tasks of environmental management are still heavy administrative, principles and impractical. Due to too many management tasks, the assignment of state management on environmental protection is fragmented, overlapping and unreasonable.

In addition, the quality of the contingent of staff working in the state management of CSR's content areas is still weak in terms of both quality and quantity, which has not been meeting the needs of the new situation, especially in localities. This can be explained by many reasons such as limited professional qualifications and aspirations of specialized staff in each field, mainly focusing on working areas such as urban areas and industrial zones which lead to a lack of manpower in local areas. Especially in term of the qualification requirements of officers in charge of CSR, which require expertise in many different fields, it will inevitably encounter more shortcomings.

Thirdly, It is also required that the management, evaluation and monitoring mechanism must be implemented synchronously from the central to local levels and grassroots levels. That means it is necessary to build a more specialized state agency in the field of CSR. Therefore, it is necessary to choose the solution between maintaining the current organizational structure of state management agencies and adding additional CSR management function only or building a specialized agency for managing CSR activities in order to be more focused and professional.

However, it is necessary to consider that this agency will be a state management agency or an agency with certain independence from the state to avoid negative aspects, lack of objectivity in the management process, detrimental to enterprises. CSR is an issue dealt with a minimum of responsibility for compliance with legal regulations. Yet, there is no limit for specific content in CSR due to the characteristics of the ethical and humanistic categories. Therefore, considering building a specialized agency is a necessary solution to avoid increasing the burden on other specialized management agencies while ensuring more expertise. That agency may be state or non-state, but it is necessary to have government agency support in enforcing it.

In the OECD guidance for multinational companies, the establishment of a network linking national CSR points of contact is also seen as an effective solution and can be considered as a model for building an independent agency in charge of CSR in Viet Nam. The purpose of engaging in network building of national communications under the guidance of the OECD is to share business expertise to manage, resolve issues of CSR. The OECD guidelines cover the concept of "national contact point" (NCP), in which all OECD member countries must establish this NCP in the domestic system. NCP is responsible for promoting the properly directing for businesses and solve problems on CSR under the guidance of the OECD. The interested party may file a complaint with the NCP on the violations of CSR of the OECD in the country.

The NCP is seen as an off-state mediation mechanism. NCPs in different countries work together on issues and report regularly. The legal nature under international law is the responsibility between states to establish NCP which directly related to state responsibility.

However, it is necessary to take measures to motivate enterprises, especially small and medium enterprises to join this NCP's network for continuous feedback. That also means how this responsibility regulation can be enforced, because if there is no enforcement mechanism, the effect will be difficult to achieve.

Fourthly, parallel to state management activities, it is necessary to manage, monitor and evaluate the optimal effective CSR implementation in the non-state sector. It is necessary to combine with strengthening the role of civil society and other organizations and individuals involved in promoting the quality of CSR.

Promoting the positive role of organizations of civil society is not only to complement for the role of state, but also to supervise state and businesses in CSR activities and thus to limit the self-interested behavior, abuse of state authority or behavior contrary to the culture and ethics of the enterprise.

The supervision of the community and society is proved by reports that enterprises must complete, which are reports on social accounting, social audit and social reporting. Currently, in Viet Nam there have not been a legal framework for the responsibility to develop the above types of reports for enterprises. The provision of responsibility to provide the aforementioned types of reports aims to reinforce the awareness of both enterprises and the community about CSR implementation, and at the same time provide a specific legal basis for assessing the level and quality of CSR implementation.

Reporting of corporate CSR activities plays an important role in fulfilling the obligation to provide information to stakeholders, creating a deeper understanding of the activities that businesses have done to get results of CSR implementation. In short, the content of the CSR report can include topics such as the content of the CSR such as responsibility to company members, employees, environmental protection, effectiveness in relation to consumers and community, social contributions and so on. One more thing to note, is that these reports must be verified by an independent, professional and reputable third party to verify the accuracy and truthfulness of CSR reports provided by the company.

Like other financial reporting activities, if enterprises are required to provide CSR reports, they will inevitably involve reports of accounting and social auditing. This requires staff working in the CSR field to have expertise in both CSR and finance and business. In Viet Nam, there is no legal framework and guidance on this responsibility to manage and organize the implementation, and help the community to monitor in practice. Reference to non-financial reports according to the laws of the French and Canadian governments or the guidance on how to develop GRI- reporting reports under the provisions of ISO 26000 standards is also one of the useful experiences for Vietnamese enterprises to develop CSR reports.

All solutions are derived from human factors. Therefore, it is important for a business in implementing its CSR commitment to the community and society to raise the awareness and responsibility of the head of the enterprise. Business manufacturer's especially prospective managers must be trained about CSR as a must for good CSR development and implementation.

For example, in the provisions of the UK Companies Act clearly recognizes the responsibility of the director/head of a business to consider factors that affect stakeholders as well as to environmental protection and society before making business decisions. Not only being responsible for the organization and operation of the business but also when the enterprise violates policies and laws related to the implementation of CSR, the head of the company must take charge. Corresponding to the proposed group of sanctions applied to enterprises violating CSR, the sanctions for the head may be prohibiting holding positions, prohibiting the establishment of companies in a certain time.

Conclusion and remarks

According to Decision 166/QĐ-TTg on issue the plan for implementation of national environmental protection strategy by 2020, with a vision to 2030, “Environmental protection is national, regional and global, thus, it is necessary to combine the promotion of internal strength and strengthening the international cooperation in environmental protection and sustainable development.”

Environmental protection is a duty regulated in Article 43, Article 50 and Article 63 of the 2013 Constitution. Article 43 states that: “Everyone has the right to live in a healthy environment and the obligation to protect the environment.” The recognition of everyone’s right to live in a clean environment was construed as the responsibility of the State to ensure this right in environmental protection. At the same time, the obligation to protect the environment is a basic duty for everyone regardless of religion, nationality or bloodline. Together with the importance of nation building and socio-economic development, it is also necessary to ensure environmental protection. Thus, through environmental protection activities. It is because the socio- economic construction of the country is guaranteed through environmental protection activities. Therefore, the corporate social responsibility performance with the goal of sustainable development can only be effective if it is associated with the responsibility to protect the environment, as regulated in Article 50 or the 2013 Constitution.

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