

Legal framework for environmental impact assessment in Vietnam: the challenges between the regulations and practice

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Abstract. After 30 years of economic reforms since the launch of *Đổi Mới* in 1986, Vietnam has recorded significant and historic achievements. From a poor, war-ravaged, centrally planned economy, which was closed off from much of the outside world, Vietnam has become a middle-income country with a dynamic market economy that is deeply integrated into the global economy. But growth has to a large extent come at the cost of the environment. Vietnam's greenhouse gas emissions have grown the fastest in the region, while the environmental quality of its air, land, and water has deteriorated considerably. Water and air pollution have reached serious levels, especially near Hanoi and Ho Chi Minh City, posing major health risks. As the most important environmental management tool, Environmental Impact Assessment (EIA) is recognized by Vietnamese Government and international organizations in the management of the impacts of future development on the country's natural resource base. EIA is the important Chapter of Law on environmental protection 2014 of Vietnam (which was passed by the 13 National Assembly at the 7th session on June 23, 2014). This article argue that while significant improvements have been achieved in the EIA legal framework, the challenges remains between the EIA regulations and practice. This article contend that the current EIA legal framework is poor and facing with challenges and that future developments of the EIA regulations in Vietnam should focus not only on legislative documents but also on improving capacity of EIA practitioners with strictly sanctions.

1 Introduction

The goalposts for Vietnam's future economic success are set broadly and aspirationally the 2013 constitution sets the objective of a "prosperous people and strong country", marking little deviation from its 1992 version. The Vietnamese Government and Party Congresses' documents couch the income objectives in similarly aspirational terms, with an annual GDP per capita growth target of 7 percent (equal to around 8 percent annual growth). Growth

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rates in this range would produce by 2035 an upper-middleincome country on the cusp of high income at the level of Malaysia or the Republic of Korea in the mid-2000s. But this target is extremely ambitious, far surpassing Vietnam's past growth and with few global precedents (Vietnam 2035).

The sustainability of Vietnam's longterm growth is further threatened by environmental stresses. Growth in the past 30 years of *Đổi Mới* has imposed significant environmental costs. Rapid depletion of natural resources is a particular concern. Environmental pollution from urban and industrial wastewater leaves waterways toxic, while urban water and air pollution are beginning to pose serious health hazards, especially near Hanoi and Ho Chi Minh City, and particularly for children. Vietnam is also one of the countries most vulnerable to climate change, with settlements and economic activity in the Mekong Delta at especially heightened risk. Exacerbating the risks is rapidly growing energy consumption, increasingly reliant on coal-powered electricity generation. In recent years Vietnam's increase in greenhouse gas emissions has been one of the world's fastest (Vietnam 2035).

Based on practical results of implementing Law on Environmental Protection 2014 and the regulations related to EIA in Vietnam shows that besides some positive results (Vietnam Law and Legal Forum (2015), the legal framework for EIA in Vietnam has revealed the shortcomings and limitations, which need to be amended and supplemented to resolve the current environmental challenges in Vietnam

This review was developed by discussing challenges remains between implementing Law on Environmental Protection 2014 and the EIA regulations and practice in Vietnam, focus mainly in shortcomings and limitations of EIA regulations with the data and supported by Ministry of Natural Resources and Environment (MONRE) and Environment and Natural Resources Department of Provinces in Vietnam.

2 Materials and Methods

This paper discusses literature review as a methodology and is based on published data of Vietnam Environment Administration, Ministry of Natural Resources and Environment (MONRE) and Environment and Natural Resources Department of Provinces in Vietnam from 2014-2018. This paper uses the comparison and analysis methods to analyzes and compares the provisions of Law on Environmental Protection 2014, EIA regulations and practical implementation of such regulations.

It shall be noted that environmental data collected mainly official information, omitting an undefined number of pending cases for further investigation. Neither skills, equipment nor integrity variables were available and taken into account for this article.

3 The challenges of EIA practices in Vietnam

Currently, in Vietnam, the system of legal documents on EIA has been completed, including: the Law on Environmental Protection 2014; Decree Nr.18/2015/ND-CP of vietnamese Government on prescribing environmental protection master plan, strategic environmental assessment, environmental impact assessment and environmental protection plan dated on February 14, 2015); Decree No. 40/2019/ND-CP on Amendments to Decrees on Guidelines for the Law on Environment Protection of vietnamese Government dated on May, 13rd 2019; Circulars of MONRE guiding the preparation of EIA reports for different types of investment projects. In addition, the Government has formed a state management apparatus on environmental protection from the central to local levels.

According to current regulations, the State management of EIA is not uniformly

assigned to one agency but to many Ministries and branches involved in the management, including: MONRE, MARD (Ministry of Agriculture and Rural Development); MOC (Ministry of Construction)...; the provincial People's Committee and the Management Board of industrial parks. The overlapping of the State management functions in the field of EIA leads to many difficulties in the implementation of policies and laws on EIA.

According to MONRE, from 2011 up to now, the whole country has about 7,000 EIA reports and 2.500 detailed environmental protection schemes (applicable to projects have been operated but not yet have EIA) have been appraised and approved. In recent years, the average annual approval of the Ministry of Natural Resources and Environment about 200-250 EIA reports; At the provincial level, these figures vary widely, with a national average of 33 to 35 EIA reports for each locality; Ministries/branches appraise very little from 1 to 30 EIA reports, especially the Ministry of Transport appraises about 70 reports per year. However, up to now, there are no specific data on EIA consulting units, estimated that nearly 1,000 organizations and individuals provide EIA services nationwide. In addition, Vietnam has not yet applied the EIA practice certificate system.

Besides some positive results, Vietnam's EIA practice still faces many difficulties and challenges. The quality of EIA reports also depends on the investor, the consultant, the type of project, the resource for implementation, the appraisal board, and appraisal agency. Based on published data of Vietnam Environment Administration, Ministry of Natural Resources and Environment and Environment and Natural Resources Department of Provinces in Vietnam from 2014-2019, Vietnam's EIA practice and EIA management is facing great challenges in the coming years, such as:

- The scientific approach of EIA based on world experiences has not been highly effective, especially the EIA implementation process, determining the scope of EIA, community consultation, using EIA reports after being approved...etc (H.T. Hai, N.D. Quang, N.T. Thang, N.H. Nam);

- Some regulations in the system of legal documents on environmental protection are inconsistent with reality such as : the time of preparing the EIA to apply for investment policy (Art.25, Clause 2 (a) of Law on Environmental Protection 2014); regulations on re-setting of EIA in case of adjustment of capacity and technology are not clear; it is not appropriate and feasible that regulations on community and social health impact assessments which must be apply to all types of projects. Up to now, there is no specific regulation on the environmental protection of the project for all stages of preparation, construction, trial operation, commercial operation and project closure. In addition, some provisions in laws such as Investment Law, Construction Law, and Law on Environmental Protection still lack uniformity (MONRE 2020); (Vietnam Law and Legal Forum (2015);

- In the project design appraisal, in the language of the EIA, the design of the project determines the source of the impact on the environment, while the state management agency only contributes comments on the basic design of the project, without approval authority. The basic design and detailed design for the next steps of the project are approved by the investor, so in some cases (for investors with limited awareness of environmental protection), the design of this project has certain limitations and will be reality. This is one of the challenges for EIA appraisal agencies;

- In some cases, due to the pressure of economic growth, some industries and localities overlook the role of "EIA is a tool to decide investment projects in the direction of sustainable development". In addition, so in some cases, EIA process has not adequately forecasted, complicated and sensitive environmental issues of the project will arise;

- The budget investment for EIA is still limited, there is not enough budget to build database on EIA. Data and information on the current of physical environment, socio-economic factors nationwide are fragmented, incomplete and systematic, while these are very important information for EIA (MONRE 2020);

- Funds for training, international cooperation on EIA have not been properly invested, and have not enough resources to conduct EIA for regional, territorial and transboundary EIA. In Vietnam, there are regions and areas with many projects of the same type and different types. Each project conducts EIA and provides solutions for waste treatment that meet environmental technical standards and measures to minimize non-waste related impacts of that project. However, it is difficult to ensure the surrounding environment will not be polluted and degraded due to the lack of integrated assessment and cumulative impact assessment

4 The shortcomings and limitations of EIA regulations

Based on nearly 5 years of implementation, the Law on Environmental Protection 2014 and EIA regulations shows that, besides some positive results, the regulations has revealed the shortcomings and limitations such as:

- The environmental administrative procedures are also fragmented, unconnected and unintegrated. In the same project, the investor must perform many environmental administrative procedures to get approval from many environmental protection parties, many state agencies such as: the decision on approving the EIA report; Environmental protection plan; the certificate of completion of environmental protection works; permits for discharge of wastewater into water sources; license for industrial emission discharge; Certificate for discarded material import...(MONRE 2020).Therefore, it is necessary to promote the administrative reform and consolidate and link the environmental administrative procedures in the laws on environmental protection in order to implement the Directive. No. 30/CT-TTg dated October 30, 2018 of the Prime Minister for improving the quality of administrative procedures at ministries, branches and localities.

- Lack of policies and provisions for arising issues on environmental protection. In fact, in recent years, there have been many incidents of pollution, large environmental degradation, taking place on a large scale, outbreaks. environmental hotspots due to exhaust. However, at present there is no legal norms for the mechanism, criteria for screening, classifying and dividing investment projects according to the level of environmental risks; specific control mechanisms for high-risk projects causing environmental pollution and incidents...(MONRE 2020). Therefore, it is necessary to supplement the regulations on EIA which based on screening, classification of investment projects, specific mechanisms to strengthen control of these projects.

- The contents of EIA are regulated in many different Laws (such as Law on Investment, Law on Public Investment, Law on Construction, Law on Water Resources, Law on Minerals, Law on Planning ...). However, between these laws, there are many interference and inconsistencies, and some gaps have not been regulated, affecting the effectiveness of environmental protection state management. The results of reviewing and comparing the provisions of laws related to environmental protection also show that many provisions and provisions of the Law on Environmental Protection 2014 need to be revised and supplemented to: (i) resolve conflicts between laws on environmental protection; (ii) updated to conform, consistent with the provisions of other laws enacted after 2014 such as Law on Investment, Law on Public Investment, Law on Construction, Law on Water Resources, Law on Minerals, Law on Planning.....(MONRE 2020);

- The Law on Environmental Protection 2014 has revealed many inadequacies, lack of uniformity, lack of regulations on EIA and environmental protection plan. The subject of EIA is large, many objects are difficult to identify. There are no specific instructions on circumstance which the investors fails to execute or is not able to execute the project within 24 months. Lack of specific regulations on change in scale, capacity, technology, extent of

content changes in EIA repetition;

- Regarding a number of other issues that still have many shortcomings that need to be considered, amended and completed such as: Issue the EIA practice certificate system; reform of administrative procedures in EIA; responsibilities of EIA practitioners with strictly sanctions...etc.

5 Recommendations

Based on challenges of EIA practices in Vietnam, the shortcomings and limitations of the Law on Environmental Protection 2014 and regulations of EIA which need to be amended and supplemented with suggestions, the following recommendations are proposed:

- Regarding environmental protection plan. The environmental protection master plan should be amended to ensure consistency with the laws on planning and requirements of environmental protection, which clearly specify the background of environmental protection planning: (i) environment protection strategy in the same development stage; (ii) climate change scenarios in the same development period; (iii) regulations on environmental zone.

It is necessary to supplement regulations on the main contents of national environmental protection planning, contents of environmental protection in regional and provincial planning; responsibility of formulating national environmental planning, contents of environmental protection in regional and provincial planning.

- Regarding EIA. To improve the quality and high efficiency of EIA, propose amendments and supplements to the following contents:

- Additional preliminary EIA to ensure compliance with the provisions of the Law on Investment and Law on Public Investment; Preliminary EIA results are expressed as part of the pre-feasibility study report or investment policy proposal report;

- The subjects of EIA must ensure consistency with investment projects, construction investment according to the classification criteria of the Law on Public Investment; Construction investment projects with waste treatment facilities and other projects which are likely to have negative impacts on the environment must make EIA reports only. Other projects that are not covered by the above-mentioned regulations and projects that apply the best technology currently available are exempt from EIA regulations. The subject must make EIA reports which are classified into 02 groups: 1) There is a risk of environmental pollution; 2) There is little risk of environmental pollution in order to provide appropriate management tools.

- The procedure for verifying the contents of EIA reports for projects likely to exert adverse environmental impacts must be supplemented. That is background for improving the quality of EIA reports, EIA report appraisal clearly defining the responsibilities to invest in waste treatment facilities of the project owners;

- Proposal to abolish environmental protection plan for projects which has no risk of environmental pollution; This certification does not control the investment of waste treatment facilities of project owners;

- EIA must be conducted in the stage of project preparation. Project owners may conduct EIA by themselves (or hire consultants to do so) and take statutory responsibility for the conclusive result after carrying out such assessment. Appraisal agencies only approve the results of appraisal of EIA reports as a basis for competent state agencies to grant project evaluation licenses, construction design appraisals or investment project decisions to ensure uniformity, synchronized with the Law on Investment, the Law on Public Investment, the Law on Construction and in line with international practices;

- Regulating the incentive mechanism for projects applying the best available

technology (BAT) and applying best environmental practices (BEP), such as: projects applying BAT are exempted from EIA regulations; the appraisal in the simple form is to collect opinions, ensure openness and simplify administrative procedures for the projects applies to BEP.

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