

Formulating and Perfecting Law on Plastic Waste Management towards Circular Economy Development in Vietnam

Bùi Đức Hiền *

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Abstract: Development of a circular economy has a close relationship with waste management in general, including plastic waste in particular. Accordingly, waste management is considered a particularly important aspect in promoting circular economy development, contributing to turning waste into input materials of production activities, helping to reduce exploitation of resources, and reduce environmental pollution. Since implementing Đổi mới (i.e. renovation) and the open door policy to support the country's development, the Vietnamese government has paid due attention to perfecting policies and laws on waste management. However, through studying the current legal regulations, the author found that besides the notable successes, the legal regulations on plastic waste management are still stifled by inadequacies, limitations, and shortcomings resulting in the failure of meeting the requirements of promoting the development of a circular economy. This article points out the inadequacies in the current regulations and implementation of the law on plastic waste management in Vietnam, and thereby, proposes some solutions to develop and improve policies and laws in this area in order to promote the development of a circular economy in Vietnam in the future.

Keywords: Plastic waste, environmental pollution, circular economy, plastic waste management.

Subject classification: Jurisprudence

1. Overview of laws and policies on circular economy development and plastic waste management

Circular economy development is a form of sustainable development that helps countries achieve both the goals of responding to the depletion of input resources and reducing environmental pollution in the output (Kiều Linh, 2019). A circular economy is an economic model in which designing, manufacturing, and service activities aim to prolong the life of matter and eliminate its negative impact on the environment. The

* Institute of State and Law, Vietnam Academy of Social Sciences.

Email: duchien@isl.gov.vn

circular economy pays special attention to the management and recycling of resources in a closed loop to avoid the generation of waste. The utilisation of resources is realised in various forms such as repair, reuse, and recycling. One of the main pillars of the circular economy is the circulation of resources with the 3Rs at its core (i.e. reduce - reuse - recycle). Therefore, promoting the 3Rs is key to stimulating a circular economy. Up to now, many international organisations and countries around the world have gradually perfected their legal institutions for the circular economy. These include the following - the European Union (EU) which has adopted the Circular Economy Action Plan 2015-2019 (CEAP) and the European Strategy for Plastics in January 2018; Finland, France, Slovenia, Germany, and Italy have announced their strategies and implementation roadmaps; and China and the EU have also signed a Memorandum of Understanding on circular economy cooperation in 2018 (Thảo Linh, 2019). The application of the circular economy development model has generated many great benefits in terms of the economy, environment, and society. According to real estimates in Europe, the circular economy can generate benefits of 600 billion Euros per year, 580,000 new jobs, and help reduce greenhouse gas emissions (VTV News, 2019). Thailand, Malaysia, and Singapore for example have applied reasonable methods of recycling solid waste, so that every year 50-55% of materials such as pulp, plastic, and heavy metals are saved through waste recycling. Moreover, this industry also raises tens of billions of dollars in revenue for these countries each year (Anh Tuấn, 2018).

In Vietnam, after more than 36 years of economic development of *Đổi mới*, in recent years land, water, and air, especially the marine environment, have become increasingly polluted. This is due to a number of reasons and causes, including plastic waste. Statistics show that Vietnam is ranked 68th worldwide in terms of area and has the 15th largest population in the world. However, it is currently ranked 4th in the world in terms of plastic waste, with 1.83 million to 2.5 million tons generated per year, according to a number of statistics (Kiều Linh, 2019). Reality shows that plastic products are diverse, and cheap, as well being very useful in many activities from production, business, services to human activities; hence, they are used more. However, plastic waste contains many toxic substances and plastic is very difficult to decompose or biodegrade. Therefore, when discharged into the environment, plastic waste can pollute the soil and water, and it can take hundreds or even thousands of years to decompose. More dangerous still, many types of plastic cannot completely decompose and can reduce to microplastics. Burning plastic waste can cause air pollution. If not properly managed, such waste will negatively affect the environment, the life and health of people and animals; it can result in biodiversity degradation, and disrupt the balance of the natural ecosystem. Fortunately, however, plastic products and plastic waste can be reused and recycled into many different and useful products. In recent years, Vietnam has paid more and more attention to promoting the development of the circular economy and perfecting policies and laws on plastic waste management¹.

¹ Currently, this issue is regulated as per the Law on Environmental Protection 2020 and Decree No.08/2022/ND-CP of the government.

Plastic waste management is the process of preventing, reducing, monitoring, classifying, collecting, storing, transporting, treating, recycling, and reusing plastic waste in order to increase the efficiency of using plastic products, prolonging their lifespan, and preventing environmental pollution, degradation, and incidents such as whales and sharks getting tangled up in plastic bags, etc.

Concerning the term “legal policy”, there are many different interpretations². However, the author shares the view that this term refers to the overall stance, ideology, principle, viewpoint, guidelines, orientations, and programmes of the state to determine the role and direction of the law at each stage or period of development, serving as a basis and foundation for law-making, translating the law into life, and enforcing the law for each particular stage or period (Nguyễn Đức Minh, 2016).

“The legal policy on plastic waste management towards the development of a circular economy can be understood as follows: the overall stance, ideology, principles, viewpoints, guidelines, orientation, and programmes of the state in determining the regulations and laws on plastic waste management throughout all stages of development; serving as a basis of, and foundation for, formulating legislation on plastic waste management; applying the law to everyday life; and maintaining the effect of plastic waste management legislation to minimise the exploitation of resources, reduce environmental pollution, and promote the development of environmental industry.”. Therefore, the legal policy on plastic waste management needs to be based on the principles of considering plastic waste as a type of resource, ensuring sustainable development, and the right to live in a healthy environment.

The legal policy on plastic waste management towards the development of a circular economy in Vietnam needs to address the following questions: Is investment, production, import, and use of plastic products advisable? Should we focus on investing, manufacturing, importing, and using plastic substitutes? Should we allow investment, production, import of plastics, plastic products, but with restrictions? Are all types of plastics harmful to the environment, people and animals? If yes, which plastic products and which types of plastic should be manufactured and imported? For what purpose should they be used? Who can manufacture plastic products? What technology is plastic production based on? What are the requirements and obligations of organisations and individuals that manufacture, import and use plastic products? What should we do with used plastic products? Should plastic waste be landfilled, incinerated, reused, or recycled?

² There is a conception that legal policy can be understood as a policy of law. Or in the state-level research project “Study on the scientific basis for building and perfecting legal policies to ensure sustainable development in Vietnam in the context of international integration”, the research team understand that legal policies contain general, overall and overarching views that orient activities in law-making, organising law enforcement, implementing law, and create necessary conditions for the above-mentioned activities in the fields of social life, serving as the basis and foundation for the formulation of legal policies in each field.

How should these activities be carried out and with what tools? Are there any policies to encourage, support, and incentivise activities that prevent, reduce, classify, collect, transport, recycle and reuse plastic waste? Who provides support and how much? How is the role of state agencies and the community shown in this process, and what is the legal responsibility if violations are committed?

2. Current status of regulations on plastic waste management towards circular economy development in Vietnam

Circular economy development is a form of sustainable development. Associated activities can be from design and production to consumption and services aimed at reducing the exploitation of raw materials, prolonging the product life cycle, limiting waste generation and minimising the negative impact on the environment.

In the context of Vietnam's economic development, resource depletion and environmental pollution caused by plastic waste are growing in seriousness; the demand for plastic products does not tend to decrease, so the removal of plastics and plastic products associated with socio-economic development cannot be solved overnight. Therefore, plastic waste management towards the development of a circular economy is an urgent requirement. The Resolution of the 13th National Congress of the Communist Party of Vietnam (CPV) officially recognised and confirmed for the first time the viewpoint of promoting the "development of a green economy and a circular economy". Consequently, this requirement has been institutionalised in Decree No.08/2022/ND-CP of the government detailing a number of articles of the Law on Environmental Protection 2020 and related legal documents³.

In order to manage plastic waste to minimise resource exploitation and reduce environmental pollution, Vietnamese law stipulates the following:

Firstly, plastic waste must be collected, classified for reuse, recycled or treated in accordance with the law. Non-recyclable plastic waste must be transferred to facilities which are regulated to deal with such waste.

Secondly, organisations and individuals have the responsibility to limit the use of, reduce, classify, and dispose of waste from single-use plastic products and non-biodegradable plastic packaging according to regulations, and not to dispose of such items directly into drainage systems, ponds, lakes, canals, rivers, and oceans.

Thirdly, it is obligatory to clearly define the responsibilities of the provincial people's committees in directing the collection and treatment of plastic waste in their localities; propagate and advocate the restriction of the use of non-biodegradable plastic packaging

³ Previously, the issue of circular economy development was recorded in Article 142 of the Law on Environmental Protection 2020.

and single-use plastic products; communicate the harmful effects of disposing of fishing equipment into the sea and plastic waste in the ecosystem⁴.

Fourthly, in order to reduce plastic waste from import activities, current legislation has prescribed a roadmap to limit the production and import of single-use plastic products, non-biodegradable plastic packaging and products, and goods containing microplastics⁵.

Lastly, environmentally friendly products, substitutes for single-use plastic products and certified non-biodegradable plastic packaging substitutes are entitled to incentives and support in accordance with the law. The state encourages reusing and recycling plastic waste that can be used in the production of goods, building and road construction materials; it supports research into and development of systems for collecting and treating floating plastic waste in the sea and ocean; and policies are in place to promote reusing and recycling plastic waste⁶.

It can be seen that the Vietnamese government has attached great importance to plastic waste management and especially the control of plastics that cause a high level of environmental pollution, including single-use and non-biodegradable plastics. However, from the perspective of promoting the development of a circular economy, it can be seen that the legal regulations on plastic waste management are still suppressed by limitations and shortcomings, such as:

Firstly, there are no specific regulations on waste prevention and minimising activities for plastic products that are not categorised under single-use plastic products and non-degradable packaging. Moreover, the current law has not completely banned the production and import of single-use plastic products or non-biodegradable packaging, it only creates a roadmap. However, even following this, Vietnam has not completely stopped producing plastic items. Therefore, the risk of environmental pollution from the waste generated in general, single-use plastic waste and non-biodegradable packaging in particular, can still occur; hence, the requirement for circular economy development, which is reducing environmental pollution, has not yet been met.

Secondly, the circular economy pays special attention to the selection of input materials for the production process. Therefore, in order to manage plastic waste towards the development of a circular economy, legal regulations need to focus more on research and investment in technology to search, manufacture, and import substitutes for plastics and plastic products. However, the current law does not specify this issue, nor has it indicated which materials are recommended to replace plastic products, etc. Rather, only general provisions are stipulated such as the state encouraging, favouring, and supporting the above activities. In practice, plastic products and especially single-use plastics, are being replaced by items such as bags made from environmentally friendly and natural materials,

⁴ See more: Point c, Clause 1, Article 62 of Decree No.08/2022/ND-CP dated 10 January 2022.

⁵ See more: Article 46 of Decree No.08/2022/ND-CP dated 10 January 2022.

⁶ See more: Clause 3, Article 47 of Decree No.08/2022/ND-CP dated 10 January 2022.

banana leaves used for wrapping material, paper straws instead of plastic, and there are even thinner plastic bottles. But these products are still in small supply. This is neither convenient nor sustainable. Single-use plastic products have not yet been completely replaced and the requirements of promoting the development of a circular economy in Vietnam are not being met.

Thirdly, a circular economy poses the problem that there should be a close connection between participants from the selection of input materials, access to input materials, production, consumption, recycling, reuse, consumption of recycled products to preferential support for these entities. However, current legislation on this issue is still fragmentary and has not yet created a complete legal framework for the construction of a circular economy development complex in the fields of production, use, recycling, reuse of plastics and plastic products.

Fourthly, the classification of plastic waste. In the Law on Environmental Protection 2020 and Decree No.08/2022/ND-CP dated 10 January 2022, attention is placed on waste management of single-use plastic products and non-biodegradable plastic packaging. However, there are no specific regulations on the classification of plastic waste. For example: plastics that can be recycled (including many times over), single-use plastics, microplastics, decomposable and biodegradable plastics, etc. (Nguyễn Thi, 2019b). Moreover, the current law stipulates that domestic solid waste collection and transportation facilities must meet the requirements on human resources, with suitable vehicles and specialised equipment to collect and transport all domestic solid waste. However, many people, including waste collectors and transporters, still do not consider waste to be a resource, and they are not aware of the long-term harmful effects of plastic waste on the environment and humans thus failing to separate domestic solid waste from plastic waste, etc.

Fifthly, regulations on the cost of collecting and transporting plastic waste. The existing legislation stipulates more clearly that the cost of collection, transportation, and treatment services of domestic solid waste from households and individuals is calculated according to provisions of the law on prices and based on the amount or volume of the sorted waste. As for solid waste that can be reused and recycled, and hazardous waste that have been generated from households and individuals and segregated, no charges will be levied for collection, transportation, and treatment. In cases where households and individuals fail to properly separate out their waste items, they must pay the same price for collection, transportation, and treatment services as per other domestic solid waste. However, up to now, the people's committees of many provinces and cities have not yet issued detailed regulations on the management of domestic solid waste generated by households. They have not specified the price and payment methods for using the services of collection, transportation, and treatment of domestic solid waste based on the volume or amount sorted.

Sixthly, regulations on reusing, recycling and disposing of plastic waste. Initially the current law provides direct regulations on encouraging the reuse and recycling of plastic

waste. However, this provision is still general, not specific. Moreover, the reality of Vietnam shows that most plastic waste collection and recycling activities are not carried out by enterprises with modern technology, but rather by craft villages and small production facilities of organisations, households, or individuals, while the effectiveness of management and supervision of these facilities in compliance with regulations on environmental pollution control is still limited.

Seventhly, to promote participation in the construction of plastic waste recycling and treatment facilities, the state stipulates a number of preferential treatment policies to support these activities. Industries producing composite materials, collecting, treating, recycling and reusing concentrated waste, including plastic waste; production and business activities of environmentally friendly products are subject to exemption or reduction of land use fees, land rents⁷ or corporate income tax incentives⁸, even incentives in terms of market and capital borrowing⁹. However, these regulations are scattered throughout many different legal documents. There is still a lack of consistency, making it difficult to implement regulations on investment attraction, production of environmentally friendly synthetic plastics or plastic substitutes; the use, reuse and recycling of plastic waste; and the market for buying and selling plastic waste resources and recycled products from plastic waste.

Lastly, concerning legal responsibilities of agencies, organisations and individuals that violate regulations on plastic waste management. According to the current law, depending on the seriousness of the violation, they will have to bear administrative responsibility¹⁰, criminal liability¹¹, and have to pay compensation for damage¹². If cadres or civil servants violate the regulations then they may be subject to disciplinary action¹³. However, the reality of the past years shows that many individuals, households and organisations have violated regulations on waste classification but have not been sufficiently punished for this behaviour.

Studying the current status of regulations and law enforcement on plastic waste management shows that the current regulations still do not meet the requirements of the circular economy development model.

⁷ See more: Article 110 of the Law on Land 2013; List of Industries Eligible for Investment Incentives, promulgated together with Decree No.118/2015/ND-CP dated 12 November 2015; and Article 132 of Decree No.08/2022/ND-CP dated 10 January 2022.

⁸ See more: Article 133 of Decree No.08/2022/ND-CP dated 10 January 2022.

⁹ See more: Article 135 of Decree No.08/2022/ND-CP dated 10 January 2022 of the Government.

¹⁰ See more: Decree No.155/2016/ND-CP dated 18 November 2016.

¹¹ See more: Penal Code 2015, amended and supplemented in 2017.

¹² See more: Civil Code 2015 and related legal documents.

¹³ See more: Law on Public Officials and Civil Servants 2008, amended and supplemented in 2019 and related legal documents.

3. Solutions for formulating and perfecting law on plastic waste management to promote circular economy development in Vietnam

Firstly, on the prevention and reduction of plastic waste towards the development of a circular economy. In this regard, the author believes that the law needs to classify the types of plastic; assess the impact each has on the environment, and scientifically determine which types of plastic should be produced, which should be banned, which should be limited in production, and which plastics should be encouraged regarding their production and usage.

The provincial people's committees need to develop concrete regulations to shorten the roadmap for restricting investment in projects on the production of single-use plastics and bags as prescribed in the current law and move forward to ban the production of single-use plastics. In parallel, legal provisions must aim to encourage and support individuals, organisations, and agencies in conducting research on production and use of plastics and bioplastic products, synthetic plastics or environmentally friendly plastic substitutes. Projects to produce plastics and plastic products need to invest in modern technology; undergo a full environmental impact assessment; and they have to process and recycle excess plastic materials in the production process.

Secondly, on sorting and storing plastic waste at source towards circular economy development. Sorting plastic waste is an important step to promote the development of a circular economy. The author believes that, in addition to completing regulations on solid waste classification, it is necessary to develop specific regulations on the classification; to have suitable recycling containers for separating different types of waste, for example: receptacles for easily degradable organic material (e.g. food leftovers, leaves, vegetables, animal carcasses, etc.), containers for groups of waste that can be reused and recycled (such as paper, plastic, rubber, nylon, metal, glass), and even separate plastic waste bins to have "clean" input materials for waste recycling. Moreover, it is necessary to communicate and educate about the law to raise awareness in the importance of sorting plastic waste on the basis of this waste being a resource, leading to a situation where each individual is really an environmental worker, as per the Japanese experience (Anh Tùng, 2018).

Thirdly, on the collection and transportation of plastic waste towards circular economy development. It is necessary to stipulate more specifically the responsibilities of waste source owners, waste transporters and treaters, and related individuals and organisations in the collection and transportation process. In addition, it is necessary to invest in human resources and waste storage equipment to modern transport to meet the requirements of rubbish collection and transportation in general and plastic waste in particular.

Fourthly, on plastic waste treatment towards circular economy development. Current legislation clearly stipulates that ordinary solid waste can be disposed of in many ways, such as by incineration, landfilling, and recycling. However, when approaching plastic

waste management in the direction of circular economy development, the state needs to prioritise and implement concrete incentives regarding land, labour, tax, technology, the market, and capital to promote organisations and individuals to develop the plastic waste recycling industry, and strengthen international cooperation on plastic waste recycling. This work not only reduces the amount of plastic waste discharged into the environment but it also promotes sustainable development of an environmental industry. In addition, for household and individual-scale plastic waste recycling and business establishments, they currently need to comply with the commitments in the environmental impact assessment report or environmental permit depending on the scale, etc. Any violations must be strictly dealt with according to the law.

Fifthly, on improving the responsibility of the main players in the management of plastic waste towards sustainable development. It is necessary to specify the responsibilities of commune-level people's committees, environmental inspectors, and environmental police in detecting and handling violations on plastic waste management. In addition, it is necessary to strengthen the supervisory role of the National Assembly and its agencies, the People's Council, and the Vietnamese Fatherland Front in plastic waste management; and to carry out thematic supervision, according to each content of state management of the environment. In addition, it is also necessary to enhance the role of the community, organisations, individuals, and enhance communication to prevent and reduce plastic waste, and to monitor and detect violations on plastic waste management (Bùi Đức Hiền, 2017a, p.59).

Seventhly, on sanctions applied to individuals, households, and organisations who/which do not separate waste at source, dispose of plastic waste in contravention of regulations towards circular economy development. It is necessary to add a provision to apply criminal liability for violating regulations on ordinary solid waste management where the risk to society is high. Regarding penalties for violating the regulations on classification of ordinary solid waste, including plastic waste, they should be implemented consistently in localities, and prevent arbitrariness among provinces and cities. It is important to strengthen the handling of the act of dumping single-use plastic waste in contravention of regulations, and even increase the punishment for such behaviour to ensure compliance. Regarding the responsibility of compensation for environmental damage caused by plastic waste, it is necessary to study and apply the burden of proof in determining the cause-and-effect relationship between the act of discharging plastic waste into the environment improperly and the damage it causes; to recognise the right to initiate collective action, the right of the community representative to initiate a lawsuit to claim compensation for environmental damage, and so on (Bùi Đức Hiền, 2017b).

It is necessary to add a provision to apply criminal liability for violations of regulations on ordinary solid waste management in cases where the level of danger to society is high. Regarding penalties for violations of regulations on classification of ordinary solid waste including plastic waste, they should be implemented consistently in localities, and

arbitrariness among provinces and cities should now be prevented. It is important to strengthen the handling of the act of dumping single-use plastic waste in contravention of regulations, even raise the level of punishment for this behaviour to ensure compliance. Regarding the responsibility to compensate for environmental damage caused by plastic waste, it is necessary to study and apply the burden of proof in determining the cause-and-effect relationship between the act of discharging plastic waste into the environment improperly and the damage occurring; recognise the right to initiate a collective action, the right of the community representative to initiate a lawsuit to claim compensation for environmental damage.

All in all, it can be seen that over 30 years of renovation and opening up for horizontal economic development, Vietnam's natural resources have been increasingly depleted and exhausted; environmental pollution caused by plastic waste has increased in recent years. Meanwhile, plastic waste, which has great economic, social, and environmental values, is wasted every day. Therefore, considering plastic waste as a kind of resource and revamping the formulation and implementation of the law on plastic waste management according to the model of circular economy development in the near future in Vietnam as described above are deemed really necessary. This will help to rationally, economically, and efficiently use resources, control environmental pollution, and contribute to ensuring the right to live in a healthy environment.

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