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CRIMINAL LIABILITY OF LEGAL PERSONS IN VIETNAM: A RELUCTANT TRANSPLANT[1]

RESPONSABILIDADE PENAL DE PESSOAS JURÍDICAS NO VIETNÃ: UM TRANSPLANTE RELUTANTE

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Abstract: With a tumultuous history from colonization to socialist political regime, Vietnam is a fertile ground for legal transplant. The existence of continuous legal transplantation proves the transplantability of this country. The literature is debating on the criteria to assess the success of legal transplant. The paper based on dominant legal transplant theory to analyse the criminal liability of legal person in Vietnam as a case of reluctant transplant with traits of a failed transplant.

Keywords: Legal transplant. Criminal Liability. Legal Person. Vietnam.

Resumo: Com uma história tumultuosa, desde a colonização ao regime político socialista regime político socialista, o Vietnã é um terreno fértil para o transplante jurídico. A existência de um transplante legal contínuo prova a capacidade de transplantação deste país. A literatura debate-se sobre os critérios para avaliar o êxito do transplante legal. transplante jurídico. O presente documento baseia-se na teoria dominante do transplante jurídico para analisar a responsabilidade penal da pessoa colectiva no Vietnã como um caso de transplante relutante com características de um transplante falhado.

Palavras-chave : Transplante legal. Responsabilidade penal. Pessoa jurídica. Vietnã.

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1. Introduction

Legal comparatists have long interested in Southeast Asian jurisdictions. This phenomenon stems from the fact that Southeast Asian countries transplanted law from major legal system such as Common law and Civil law to adapt promptly the social and economic development (BUI, 2017, p. 153). Vietnam is not an exception to this tendency. Throughout its fragmented history, Vietnam has witnessed changes of state models and political regimes.

Before conceptualizing legal transplant theory, it is necessary to take a general look at comparative law—the scholarly world explores this term. The first and most fundamental task of comparative law as a field of law is to explore the relationships between legal systems, thereby showing the patterns of change triggered by the interaction between the law and legal culture as well as arguing on law nature and its development direction (GRAZIADEI, 2019, p. 442). There are two dominant schools of comparative law. The first school believes that differences between countries increase legal understanding in society, while the second one indicates that only similar countries can mutually benefit from exchanging experiences (ALLISON, 1996; TEUBNER, 1998). These are also the trends that influence the theories and perspectives on legal transplant that will be analysed in this paper.

The term legal transplant is often believed by scholars to have first appeared in two studies by Alan Watson and Kahn Freund (CAIRNS, 2013; FREUND, 1974; MERRYMAN, 1981; TWINNING, 2005; WATSON, 1974). Accordingly, legal transplant is the transferring of legal institutions of one country to apply in another country, or it can also be the use of a set of norms and principles borrowed from another country (GRAZIADEI, 2019). For both Watson and Freund, legal transplant is a "dynamic" approach compared to the traditional "static" approach of comparative law (See DAVID e BRIERLEY, 1985 as a representative of the "static" approach). More specifically, instead of simply synthesizing and comparing the similarities and differences between legal systems, legal comparatists need to consider the changing law nature and the causes and processes related to legal reform (AJANI, 2007; SACCO, 1991a, b). Legal transplant can be viewed vertically—internalization of law (international organizations, international treaties, international and national agreements) or horizontally—consultation and reception from one country to another. country (from a country to another) (GILLESPIE, 2008, p. 662). The method of transplant can be voluntary or imposed, the scope of transplant can be the entire legal system, statutes, a legal principle, or legal doctrine (GILLESPIE, 2008).

In Vietnamese volatile history, this nation has used legal transplant to perfect its legal system unremittingly. But not all transplants are successful, due to many different reasons. In this paper, we analyse the transplant of criminal liability in legal person in Vietnam as a typical example of forced transplant. Therefore, this legal institution does not take root in legal life.

2. Theoretical framework

Transplantability as the importance of legal culture

There are three main arguments on the transplantability. The first one upholds that legal transplant is feasible. Alan Watson, one of the two founding fathers of legal transplant theory, is a representative when he argues that there is no connection between law and the society to which that law is applied (WATSON, 1974). Watson sees that if law once reflected the spirit of peoples and nations, long-term processes of social differentiation and internationalization have separated this connection. He believes that processes of change are endogenous because "to a large extent law possesses a life and vitality of its own; that is, no extremely close, natural or inevitable relationship between law, legal structures, institutions and rules on the one hand the needs and desires and political economy of the ruling élite of the members of the particular society on the other hand"(WATSON, 1978, p. 314–315). In addition, law is guided by a small group of legal elites with the same educational, epistemological and legal orientation, so it can be transplanted freely, transcending cultural borders (GILLESPIE, 2008, p. 671–672). Therefore, it is socially easy to implant a legal rule (WATSON, 1974, p. 95), and a legal rule is implanted, simply because it is a good idea (WATSON, 1978, p. 315). On the other hand, law is essentially independent. To reinforce this argument, Watson uses the example of the process of transforming Roman law in medieval and post-enlightenment Europe and the development of a market economy. From there, legal transplant depends on the receiving country. Watson also commented that the transplant of single regulations or large parts of a legal system is common and that law, similar to technology, is the result of human experience (WATSON, 1974, p. 9 comparative law "as an academic discipline in its own right, is a study of relationship, above all the historical relationship between legal systems or between rules of more than ony system."). The first observation is inherited from the observation of American legal sociologist Roscoe Pound that the process of world legal history is the history of borrowing legal materials from other legal systems and of assimilation of materials outside the law (POUND, 1938; WISE, 1990). Watson's views have a strong influence on jurisprudence in general and comparative law in

particular. Watson's arguments are still convincing and attractive to today's jurists (FRANCIONE, 2002).

The second point of view is the opposite of the first point of view when strongly opposing legal transplant coming from scholars who emphasize culture (culturalist) (RILES, 2005) or context (contextualist) (TWINNING, 2005). Pierre Legrand argues that law inherently links the language and culture of the country of origin, giving it a set of indigenous meanings. From there, the translation of law from one legal system to another is literally just a meaningless form of language and legal transplant cannot occur (LEGRAND, 1998, p. 113–119, 2001, p. 57–63). That shift will certainly cause distortion or inconvenience, or in other words, legal transplant only exists on paper and does not really exist in essence because legal rules/principles only have meaning when placed in a specific social and cultural context (LEGRAND, 1996b, 1998, p. 114–116). Evidence for this argument is the view of understanding and legal knowledge between the two systems of Civil law and Common law. Meanwhile the former emphasizes the role of judges and lawyers in applying precedents, the later upholds the importance to state civil servants and lawyers in systematically explaining the law (LEGRAND, 1996a). Legrand's views inherit the thinking of Montesquieu, one of the fathers of modern comparative law (LAUNAY, 2001). He believed that law reflects reason and is only for the people where it was promulgated—closely tied to the geographical context, traditional practices, and politics of each individual country (BARON DE MONTESQUIEU, 1995).

In addition, the famous German jurist Savigny was also influenced by Montesquieu and affirmed the close relationship between law and society when he said that law is "the expression of existing and distinctive characteristics of community as habits, language and social organization" (SAVIGNY, 2002, p. 24). This concept originating from Montesquieu was developed into mirror theory. Law reflects society because society creates law based on its own values. On the contrary, society also reflects law because law constructs society based on the classification of law (EWALD, 1995; TAMANAHA, 2001). This view is contrary to Alan Watson's idea when this scholar believes that law can develop by transplantation without considering factors such as economics, politics, and society of the receiving country (GILLESPIE, 2008).

The last argument is neutral than the binary arguments on legal transplant. Gunther Teubner criticizes both Watson and Legrand in their view of legal transplant and argues that a conceptual "refinement" is needed to reflect the link more accurately between law and society. This scholar argues that the link between law and society is no longer comprehensive

but selective and that this link varies strongly from loose to tight and is established through differences rather than uniformity (TEUBNER, 1998, p. 14–18). Teubner uses the term "legal irritant" to indicate that legal transplant does not automatically replace pre-existing legal connotations and practices, but instead triggers a series of Choices and outcomes are unpredictable. Teubner uses this metaphor to avoid the "false dichotomy of repulsion or interaction which is a result of thinking with this metaphor" that comes from legal transplant, which is the binary image of the target state when rejecting or accepting legal transplant (TEUBNER, 1998, p. 12). David Nelken argues that "legal transplant" and "legal irritant" have much in common because they both "orient our gaze primarily to legal issues when trying to use the law to change other social and legal orders"(NELKEN, 2001, p. 269–275). Örücü uses the term "legal transposition" to emphasize that "the change to the transplanted laws coming from the appropriate actors of the receiving state is the key to successful legal transplant"(ÖRÜCÜ, 2002, p. 205–208). This scholar also noted that the receiving country often has a wrong epistemology in interpreting the transplanted legal documents, leading to misunderstanding of the content. Kahn Freund's views can also be classified as This viewpoint states that legal transplant can occur, but success or failure depends on many different factors.(FREUND, 1974) Specifically, it is necessary to pay attention to the economic, political, and social factors of the receiving country because legal transplant can easily be successful but sometimes it is simply a failure (FREUND, 1974).

Public and private law

Another debate in the study of comparative law that needs to be mentioned is whether legal transplant only appears in the field of private law or also in the field of public law. First of all, it is necessary to recognize that the classification of public law or private law is a characteristic of the Civil law system, while the Common law system does not have such a clear division. Therefore, we can distinguish public law here as constitutional law and administrative law, while private law is civil law and commercial law.

In our opinion, this debate originates from two main reasons: the Watson's argument of legal transplant and the development practice of legal transplant in the world. In presenting cases of legal transplant to prove his theory, Watson focuses exclusively on the area of private law. Watson, for example, points out that legal transplant dates back to the ancient Code of Hammurabi (WATSON, 2000, p. VIII) or quotes Milsom (WATSON, 1974, p. 8) on the prevalence of legal transplant in the field of private law. This is understandable as Watson is an expert in Roman law and legal history. Thus, it can be seen that right from

the time of its construction, Watson's legal transplant theory revealed its weakness in not being able to fully cover the entire field of public law but only focusing on private law.

The growing practice of legal transplant around the world also explains this debate. Although it appeared in the 1970s, it was not until the 1990s that legal transplants were really noticed and discussed. This is closely related to world history at that time. First, with the end of the Cold War, and the collapse of the Soviet Union, many countries tried to import legal norms and institutions from democratic countries with market economies. Vietnam, when it started its Doi Moi program in 1986, was no exception to the trend at that time. Second, the signing of the Maastricht Treaty in 1992 aimed at the process of legal harmonization in Europe also promoted the process of legal transplant in this region (ZIMMERMAN, 1994). Third, the field of law and development is growing strongly, leading to increased demand for legal reform for economic development (RITTICH, 2004; THOMAS, 2011). In particular, we must mention the World Bank's involvement in supporting countries to reform many areas of law (WORLD BANK, 2002).

It can be seen that, from theory to practice, legal transplant focuses on the field of private law because the main motivation of countries when "importing" legal rules and institutions from other countries is economic development. In fact, at least true for the last decade of the last century.

From the beginning of the 21st century until now, research on legal transplant has been expanded to the field of public law. Specifically, studies related to the transplant of human rights (AMOS, 2013), constitutional courts in East Asia (GINSBURG, 2002), the constitutional model (HORWITZ, 2009), and the development of supranational courts in South America (ALTER e colab., 2012). Or in Vietnam, there are two famous studies by two Australian scholars, Nicholson, and Gillespie, on the court model of Vietnam (NICHOLSON, 2007) and on Commercial Law(GILLESPIE, 2006), respectively. Commercial law and courts in Vietnam are both products of the process of legal transplant. Therefore, these studies add to literature on legal transplant and allow us to confirm that legal transplant is common in the field of public law, not just private law.

3. Legal transplant in Vietnam

Vietnam's contemporary legal system is built on the basis of historical legal transplant activities, originating from China, France, the Soviet Union and more recently from East Asia and Western countries (GILLESPIE, 2006, p. 2). Gillespie believes that legal transplant

in the case of Vietnam is understood as "the transfer of laws and institutional structures across geopolitical and cultural borders"(GILLESPIE, 2006, p. 3).

It can be seen that legal transplant in Vietnam takes place in two main ways—forced imposition and voluntary reception—two popular ways of transplant in the world (TAMANAHA, 2001, p. xii). The first method is associated with the colonization process of China and France. Countries that colonized Vietnam not only had armies but also brought with them their cultures and legal systems to apply in Vietnam (This is similar to the case of England and Netherlands. See MERRYMAN, 1981). During the Northern colonial period, Confucian legal ideology was the foundation for Vietnam's legal and political system (NGUYEN e TA, 1987; TA, 1982). The clearest evidence is the 1815 Law of King Gia Long under the Nguyen Dynasty, also known as Hoang Viet Law, which is an imitation of the prototype of the Great Qing Code combined with the Hong Duc Code of Vietnam in the previous period (TRẦN, 1971). In particular, although it is considered to have its own characteristics to reflect and address the customs and practices of contemporary Vietnamese society, the Hong Duc Code is strongly influenced by Chinese law (Tang dynasty, Ming dynasty) as well as humanism and the rule of law (NGUYỄN, Ngọc Huy, 1989, p. 177; VŨ, Văn Mẫu, 1961, p. 242–251). Then, in the 19th century, the French issued a decree establishing the judiciary with the establishment of first instance courts, commercial courts and higher appellate courts (HOOKER, 1978). This is France's move to transplant law into the Vietnamese legal system through applying their laws in the colonial country (England also imposed their legal system in colonial countries, such as Palestine or Malaysia. See MAHY e RAMSAY, 2014). Transplant of law through coercion, associated with the colonization process of Western countries, has a long history. Research scholars use the term "legal imperialism"(MATTEI e NADER, 2008). The transplant of law in Europe has a history dating back to the ancient period when law was imported from city-state to city-state and then from city-state to the countryside in the Middle Ages (WHITMAN, 2009). Western law has a long tradition of transplant before the colonization process (WHITMAN, 2009). French influence on legal system remained because Vietnam was still considered a country following the Civil Law tradition with absolute dominance of written laws promulgated by the National Assembly (QUIGLEY, 1989).

The second path of legal transplant emerged after Vietnam gained independence and was motivated by the goals of prestige and economic efficiency (This is two of three factors leading to legal transplant, the rest is the coercion GRAZIADEI, 2019). Absorbing the Soviet thinking and legal system met Vietnam's needs after gaining independence, abolishing the

French legal system, and moving forward to build socialism. The most obvious manifestation is the pursuit of a centralized subsidized economy (FFORDE e DE VYLDER, 1996).

Regarding the field of private law, after 1986 with the advent of the *Doi Moi* (Renovation) policy, Vietnam was forced to transform quickly to integrate with the world. Ending the centralized subsidized economy to build an economy with many sectors was clearly demonstrated in 1990 with the promulgation of the Private Enterprise Law and the Company Law based on the model of the 1966 French businessman law (GILLESPIE, 2002; NGÔ, 2016, p. 112–113). Later, these laws were replaced by the Enterprise Laws of 1999, 2005, 2014, adopting the model of German company law and Anglo-American company law (NGÔ, 2016, p. 113). In addition, the 1995 Civil Code is also the result of receiving foreign law from Soviet and Russian law with the German codification model (NGÔ, 2016, p. 113). This is also the general trend of Eastern European countries after the dissolution of the Soviet Union (AJANI, 1995).

Regarding the field of public law, many scholars have criticized Confucianism for negatively influencing the modernization of law, especially the building of a rule of law state in Vietnam. However, scholar Bui Ngoc Son points out that Confucianism has a positive impact on public law in Vietnam, especially constitutional law. Specifically, in his doctoral thesis, this scholar pointed out that Confucianism has penetrated Vietnamese people's understanding of terms such as elections, votes of confidence and human rights (Vietnam is not an exception. Confucianism influenced on constitutional law of other East Asian countries. BUI, 2013, 2016). The influence of the Soviet legal philosophy is also clearly shown in the 1959 Constitution when it stipulates socialist legislation, centralized democracy, and collective ownership - these are also the three fundamental principles of the Soviet Union. Soviet political-legal ideology (GILLESPIE, 2006, p. 39–68). Another example is the 1946 Constitution which was textually the product of the process of transplanting the provisions of the 1875 French Third Republic Constitution (NGUYỄN, Văn Quân, 2017; SIDEL, 2009, p. 28).

4. Criminal liability of legal persons in Vietnam

It can be seen from the theoretical framework of legal transplant that this is essentially a discussion between scholars about the philosophical nature of law or the relationship of law when placed in relation to culture and economics, political, social as well as legal infrastructure. These factors are related to transplantability (MUNDAY, 2003).

The case of Vietnam needs to be viewed multi-dimensionally. It can be affirmed that the period of law transplant in the direction of forced imposition had certain successes. This can be explained by the fact that Vietnam's legal system in the feudal period was not yet clear and still existed in the form of customary law with indigenous sources (VŨ, Quốc Thông, 1971), so when written law appeared, it would be easier to is received. However, there are two things worth noting here. Firstly, with the same method of transplanting law, the Confucian foundation from China appears to be stronger and overwhelms Western thinking in French law when applied in Vietnam. This may be because factors such as culture, economics, and politics of Vietnam and China are similar and therefore more compatible than France (LUONG, 1992). Second, after Vietnam moved forward to build socialism and learned from the Soviet model, the imprint of French law became blurred. This proves that implanting laws through forced imposition is unlikely to have as long-lasting vitality as the voluntary path. This shows that Freund's point of view is correct when explaining the connotation of "transplant" when he gives two examples of organ transplant and mechanical transplant. Legal transplant is similar to organ transplant because to be successful, the legal idea or legal norm needs to be naturalized or assimilated into the local legal system, otherwise it will be eliminated (WISE, 1990).

Transplanting laws with voluntariness through reference to the laws of other countries in Vietnam does not seem to be as successful as the other method. In fact, many experts still believe that Vietnam's laws are lacking in uniformity, feasibility, transparency or "law in heaven, life on earth", causing us to look back at Watson's theory. Legal transplant is not so simple. In other words, it is impossible to recognize the feasibility of legal transplant as carelessly as Watson when only focusing on the receiving country and forgetting how that legal idea is operating in the original country (for example, the case of the Roman Empire has not yet confirmed the practice of applying their laws).

After the *Doi Moi* period, Vietnamese lawmakers tried to learn and apply models of developed countries to accelerate the process of legal modernization. In the international arena, model laws such as UNCITRAL and UNIDROIT encourage the process of transplanting laws in developing countries to meet the needs of globalization as well as the requirements of international treaties such as TRIPS (SHI, 2010). In the field of criminal law, after 1986, Vietnam became a member of many international conventions on crime prevention and control such as: Convention against transnational organized crime, Convention against corruption, Convention against the Financing of Terrorism, 40 Recommendations of the Financial Task Force on Money Laundering (FATF)… these

international documents consider criminal liability of legal persons as a tool to fight crime. effective. This is one of the driving forces pushing Vietnam to apply criminal liability of legal persons. It should be reiterated that Vietnamese criminal law is deeply influenced by Soviet (and Russian) criminal law, which is unfamiliar with the prosecution of criminal liability of legal persons (the principle of individual responsibility is the basic principle of Russian criminal law PARAMONOVA, 2021, parag. 237). In other words, introducing legal person criminal liability into criminal law is a way to demonstrate Vietnam's commitment to international cooperation in fighting crime, creating trust for international partners, a symbol of Vietnam's legal integration. In 2015, in the area of Eastern Europe and Central Asia, there were 12 countries stipulated corporate criminal liability (OECD, 2015, p. 14).

At the national level, the issue of criminal liability for legal persons was hardly raised until about 15 years ago (In France and Korea, debates on criminal liability of legal persons have long been heated. MESTRE, 1899; PARK, 2018). This comes from the historical context of Vietnam: The Democratic Republic of Vietnam was born on September 2, 1945, and experienced two wars with France and the United States until 1975. After the war, Vietnam Pursuing a centralized economic model and Soviet-style planning, the issue of criminal liability of legal persons has not been raised. It was not until Vietnam's economic integration that the issue of criminal liability arose.

In the history of Vietnamese criminal law, at the time of amending the Penal Code in 1999, the issue of criminal liability of legal persons was raised, but in practice at that time, Vietnam did not have typical examples. Examples of serious violations committed by legal persons, affecting human life and health as well as the economy and the environment, require criminal prosecution. By the time of codification of the 2015 Penal Code, it showed that in practice, many violations causing environmental pollution had occurred such as:

The violation of directly discharging untreated wastewater into the Thi Vai River for 14 consecutive years, polluting 2,686 hectares of aquaculture land, accounting for 80 - 90% of river pollution, caused thousands of physical damages estimated billion VND of Vedan Vietnam Company. Nicotex Thanh Thai Joint Stock Company buried dozens of tons of pesticides in the ground, poisoning the soil and water sources, directly threatening the safety of people's lives and health. The case of Binh An Textile and Garment Raw Materials Joint Stock Company under Viet Thang Corporation and Dai Phuc Mechanical Manufacturing and Services Company Limited discharging untreated waste directly into the environment (BỘ TÀI NGUYÊN & MÔI TRƯỜNG, 2013).

The situation of legal violations by legal persons in Vietnam after 2010 increased at an increasingly dangerous level, commonly in the fields of environmental protection, business, trade, tax, and insurance. These legal violations have caused serious damage to the socio-economy and to human life, requiring strong solutions to prevent them.

Theoretically, from 2009 to 2015, Vietnam has focused on researching issues related to the criminal liability of legal persons: types of legal persons subject to criminal liability, sanctions applicable to legal persons.

Besides, the criminal liability of legal persons has been recognized in the criminal laws of many countries (until 2015, there are more than 70 countries imposing criminal liability on legal persons. ISROILOV e colab., 2021, p. 295–296). Therefore, to ensure equality between Vietnamese legal persons operating abroad and foreign legal persons operating in Vietnam, it is necessary to have regulations on the criminal liability of legal persons.

In the face of violations that cause pollution, damage the environment and harm the health of many people, handling with administrative and civil sanctions (compensation) is not effective, as a preventive deterrent. is not high, this shows that the mechanism of administrative sanctions and compensation for damages applied to legal persons in Vietnam has proved inadequate. Furthermore, because administrative, civil, or economic sanctions are only fines, they are ineffective. In addition, administrative and civil measures cause difficulties for people who suffer damage because they cannot fulfil their obligation to prove the damage caused to them in the procedure for claiming compensation. harm under civil law. Therefore, the provision of criminal liability for legal persons is a practical requirement to have stronger and more severe handling and punishment measures to support other handling measures to ensure the strictness of the law and the ultimate investigation of the legal person's responsibility for extremely dangerous violations of a criminal nature, one of which is criminal handling of the violating legal person.

In the process of codifying the criminal liability of legal persons, the 2015 Penal Code was influenced by the guiding viewpoint: "must be careful in determining the scope of criminal liability of legal persons, mainly focusing on economic, environmental crimes and some other crimes required by international integration"(CHÍNH PHỦ, 2015). According to international experience, most countries that regulate criminal liability for legal persons for the first time show caution by delineating a number of crimes that legal persons often commit (popularity), has a certain level of danger and is easy to prove in practice. Therefore, the fact

that the Vietnamese Penal Code stipulates only 33 economic and environmental crimes is not an exception.

According to the provisions of Article 76 of the 2015 Penal Code, the scope of crimes that PNTM commits are subject to criminal liability including the following groups of crimes and specific crimes: 9/12 crimes belong to the group of crimes in the field of business. commercial business (Section 1, Chapter XVIII. Crimes of violating economic management order); 7/11 crimes belonging to the group of crimes in the fields of finance, banking, securities, and insurance (Section 2, Chapter XVIII. Crimes of violating economic management order); 6/19 crimes belonging to another group of crimes that violate economic management order (Section 3, Chapter XVIII. Crimes that violate economic management order); 9/12 crimes belong to the group of environmental crimes (Chapter XIX. Environmental crimes); 01/23 crimes belong to the group of crimes that violate public safety (Section 4, Chapter XXI. Crimes that violate public safety and public order); 1/12 crimes belong to the group of crimes infringing on other public order (Section 4, Chapter XXI. Crimes infringing on public safety and public order).

Through comparative data, the number of crimes for which women are subject to penal liability is low (33/318 crimes, approximately 10.4%) compared to all crimes prescribed in the 2015 Penal Code.

Although the criminal code took effect from January 1, 2018, by the end of 2022 there were only 03 cases related to criminal liability for legal persons committing crimes according to the statistics of Department of Crime Statistics and Information Technology, Supreme People's Procuracy of Vietnam (internal information). Meanwhile, criminal law violations by commercial legal persons in reality do not tend to decrease. We can mention famous cases such as: VN Pharma Joint Stock Company imported a large volume of fake cancer drugs which was exposed in 2017, Formosa Ha Tinh Company was discovered to be polluting the marine environment in 2016.

The difficulties in prosecuting the criminal liability of legal persons have arisen since the process of codifying the Penal Code 2015, when there were many opinions expressing disagreement about adding provisions on criminal liability of legal persons to the Penal Code with the following provisions: The main reasons are: Such regulations will change traditional concepts about crime; The cause of legal person violations is not due to lack of law but due to lack of strict enforcement; To enhance deterrence and prevention, simply raising the fine level in the Law on Handling of Administrative Violations is enough. The regulation of criminal liability of legal persons, especially when applying the penalty of temporary or

permanent revocation of business licenses, can cause loss of jobs for many workers (BỘ TƯ PHÁP, 2014). According to traditional concepts in Vietnamese criminal law - which is influenced by Soviet criminal law, the basis of criminal liability is the performance of acts constituting a crime. To prosecute a person for criminal liability, the agency conducting the proceedings must determine the criminal act and the fault factor of the person who committed that act. The behavioural element requires the objective behaviour expressed on the outside and the consequences caused by that behaviour; the subjective element requires the subject to have a psychological attitude that when committing the crime, he/she admits it. Being aware of one's behaviour and controlling one's will, these elements form an inseparable unity. Meanwhile, legal persons are formed by the combination of many natural persons and the "acts" of legal persons are performed through specific natural persons, the above traditional concept becomes no longer appropriate. The concept of criminal liability associated with the fault factor (deeply influenced by Soviet-Russian criminal law) is an obstacle to the prosecution of legal persons for criminal liability in practice.

Even when the 2015 Penal Code was passed, there still exists the view that legal persons are not the subject of crime but can only be the subject of criminal liability (LÊ, 2020, p. 253; NGUYỄN, Văn Hương, 2016, p. 62). Accordingly, "a commercial legal person cannot be the subject of a crime but can only be the subject of criminal responsibility for a crime committed by an individual (person). Therefore, only commercial legal persons can be held criminally responsible, no commercial legal persons commit crimes in the true sense"(NGUYỄN, Ngọc Hoà, 2017, p. 17–18).

Also, for the above reasons, in reality, not only in Vietnam but also in many countries in the continental European and Asian systems affected by Civil law (countries that attach great importance to completeness and rigor). of substantive law), regulations on criminal liability for legal persons are recognized and applied later than in countries with other legal systems.

In addition, the small number of violations committed by legal persons that are criminally handled comes from the small number of acts of legal persons that can be criminally handled under the 2015 Penal Code. There are only 33 crimes prescribed. , while currently many acts of legal persons commit crimes in the fields of business, transportation, commercial fraud, tax evasion, bribery, infringement of intellectual property rights, industrial property, counterfeiting, trading in counterfeit goods, intentionally violating regulations on economic management, crimes related to finance and banking; Environmental crimes... committed by legal persons for the benefit of legal persons or within the framework of legal

persons' activities are increasingly common and serious with sophisticated, highly organized tricks and many cases. transnational.

In addition, there is a psychological concern that criminal handling of legal persons will affect employees and legal beneficiaries of dividends (shares) of the enterprise who will be prosecuted. These people are not at fault, cannot know or do not have to know about the enterprise's violations of law, but may suffer damage from criminal handling of the legal person (fines, suspension of operations, closure of legal persons…). Meanwhile, current Vietnamese law only has provisions to address employee benefits when an enterprise is declared bankrupt. In case a commercial legal person suspends its operations for a term or permanently, there are no regulations to protect the rights of workers. These doubts hinder the prosecution of legal persons for criminal liability in practice. Instead, public authorities use administrative sanctions (fines) and allow businesses to continue operating.

It can be seen that Vietnam's haste without considering the compatibility between the country and Vietnam has caused the legal transplant to not be as successful as expected.

Watson explains the failure of legal transplant: lack of ideas, ideologies, and values favourable for legal transplant, implanted legal concepts are corrupted. swapping concepts, with the same name but different connotations, with different purposes, lack of favourable institutions to help apply and disseminate legal ideas, helping the majority of people to participate more, benefit more and be empowered more from the transplant law (WATSON, 1974). Additionally, there may be another explanation for this phenomenon. Harding researched legal transplant in Southeast Asian countries (specifically Thailand, Malaysia, Indonesia) and said that legal transplant is no longer new, it has been going on for hundreds of years and is deeply rooted, finding a fertile land (HARDING, 2001, p. 213). However, the purpose and effectiveness of legal transplant is not entirely as intended because the global doctrine that has covered local knowledge as well as the transplanted law cannot escape being used for different purposes localized or modified in practice (HARDING, 2002, p. 45).

The promulgation of new laws can be seen as a complex legal phenomenon. Because this process involves the entire legal, political, physical, cultural, and economic environment "in which a new law is debated, drafted and put into effect"(NEILSON, 2006, p. 307). Therefore, legal transplant must be placed in the paradigm of legal culture in order to have an overview. Vietnam can refer to the research of Siems, which points out five types of legal transplants that may be successful, including: Policies favourable to political, cultural or socio-economic conditions of the receiving country; Combination of new and old legislations; Additional purposes fulfilling of the transplanted law in the receiving country;

Legal rules and institutions may be more durable in the received law than in the country of origin; Law reform ideas implemented abroad but not implemented in the origin country (SIEMS, 2014). In addition, it is necessary to thoroughly research objective and subjective factors to maximize the effectiveness of legal implantation (NELKEN, 2003).

In addition, the process of legal implantation can also be considered in three main steps: consider the legal rule that needs to be implanted and/or consult foreign legal experts (LEMPERT, 1992); draft new laws for legal reform (LANGER, 2004); implementing newly promulgated laws and regulations.

5. Conclusion

The globalization process promotes the process of transplanting laws to serve economic development goals—the more similar laws the more reduced transaction costs. On the other hand, legal transplant also promotes the process of judicial reform in countries, especially developing countries, to meet the standards signed in international documents.

In other words, when a country encounters a legal problem, the available solutions are limited. Meanwhile, these solutions or ideas may have been implemented in another country. Therefore, countries can refer to each other's experiences to evaluate the impact of these solutions in practice. Legal transplant is gradually becoming a global trend when it can help countries speed up the policy innovation process, saving both time and costs. However, the success of legal transplant is not certain; the rooting of a legal regulation or rule in the place of transplant depends on many variables.

References

AJANI, G. **By Chance and Prestige: Legal Transplants in Russia and Eastern Europe**. American Journal of Comparative Law, v. 43, n. 1, p. 93–117, 1995.

AJANI, G. Transplants, Legal Borrowing and Reception. CLARK, D. S. (Org.). **Encyclopedia of Law & Society: American and Global Perspectives**. Thousand Oaks, CA: Sage, 2007. v. 1. p. 1509–1512.

ALLISON, J W F. **A Continental Distinction in the Common Law: A Historical and Comparative Perspective on English Public Law**. Oxford: Clarendon Press, 1996.

ALTER, K J e HELFER, L R e SALDIAS, O. **Transplanting the European Court of Justice: The Experience of The Andean Tribunal of Justice**. American Journal of Comparative Law, v. 60, n. 3, p. 629–694, 2012.

AMOS, M. **Transplanting Human Rights Norms: The Case of The United Kingdom's Human Rights Act**. Human Rights Quartely, v. 35, n. 2, p. 386–407, 2013.

BARON DE MONTESQUIEU, Charles Louis de Secondat De. **De l'esprit des lois**. Paris: Gallimard, 1995.

BỘ TÀI NGUYÊN & MÔI TRƯỜNG. **Báo cáo tổng kết tình hình thực hiện nhiệm vụ công tác năm 2013 và kế hoạch công tác năm 2014 của ngành tài nguyên và môi trường**. . Hà Nội: Bộ Tài nguyên & Môi trường, 2013.

BỘ TƯ PHÁP. **Báo cáo gửi Uỷ ban thường vụ quốc hội trong quá trình chủ trì soạn thảo BLHS năm 2015**. . Hà Nội: Bộ Tư pháp, 2014.

BUI, Ngoc Son. **Confucian Constitutionalism in East Asia**. London: Routledge, 2016.

BUI, Ngoc Son. **Confucianism and Constitutionalism in Vietnam**. PhD thesis ed. Hong Kong: University of Hong Kong, 2013.

BUI, Ngoc Son. **The Law of China and Vietnam in Comparative Law**. Fordham Int'l L.J., v. 41, n. 1, p. 135, 2017.

CAIRNS, John W. **Watson, Walton, and The History of Legal Transplants**. Georgia Journal of International and Comparative Law, v. 41, n. 3, p. 637–696, 2013.

CHÍNH PHỦ. **Tờ trình về dự án Bộ luật hình sự (sửa đổi)**. , nº 186/TTr-CP. Hà Nội: Chính phủ, 27 Abr 2015. Disponível em: <https://www.bqllang.gov.vn/danh-sach-khach-vieng/142-du-thao-bo-luat-hinh-su-sua-doi/4093-to-trinh-ve-du-an-bo-luat-hinh-su-sua-doi.html>.

DAVID, René e BRIERLEY, John E.C. **Major legal systems in the world today**. 3. ed. London: Stevens & Sons, 1985.

EWALD, William. **Comparative Jurisprudence (II): The Logic of Legal Transplants**. The American Journal of Comparative Law, v. 43, p. 489–510, 1995.

FFORDE, Adam e DE VYLDER, Stefan. **From Plan to Market: The Economic Transition in Vietnam**. Colorado: Westview Press, 1996.

FRANCIONE, Gary. **Alan Watson's Controversial Contribution to Legal Scholarship**. The Georgia Journal of International and Comparative Law, v. 31, p. 59, 2002.

FREUND, Kahn. **On Use and Misuses of Comparative Law**. The Modern Law Review, v. 37, n. 1, p. 1–27, 1974.

GILLESPIE, John. **Towards a Discursive Analysis of Legal Transfers into Developing East Asia**. New York University Journal of International Law and Politics, v. 40, p. 657–721, 2008.

GILLESPIE, John. **Transplanted Company Law: An Ideological and Cultural Analysis of Market-Entey in Vietnam**. International & Comparative Law Quarterly, v. 51, n. 3, p. 641–672, 2002.

GILLESPIE, John. **Transplanting commercial law reform: developing a "rule of law" in Vietnam**. Aldershot, England: Ashgate Pub. Company, 2006.

GINSBURG, Tom. **Confucian Constitutionalism? The Emergence of Constitutional Review in Korea and Taiwan**. Law & Social Inquiry, v. 27, n. 4, p. 763–799, 2002.

GRAZIADEI, Michele. Comparative Law as the Study of Transplants and Receptions. REIMANN, M.; ZIMMERMAN, R. (Org.). **The Oxford Handbook of Comparative Law**. 2. ed. Oxford: Oxford University Press, 2019. p. 442–482.

HARDING, Andrew. Comparative Law and Legal Transplantation in South East Asia: Making Sense of the 'Nomic Din'. NELKEN, D.; FEEST, J. (Org.). **Adapting Legal Cultures**. Oxford: Hart Publishing, 2001. p. 199–222.

HARDING, Andrew. **Global Doctrine and Local Knowledge: Law in South East Asia**. International & Comparative Law Quartely, v. 51, n. 1, p. 35–53, 2002.

HOOKER, M B. **A Concise Legal History of South-East Asia**. Oxford: Clarendon Press, 1978.

HORWITZ, Morton J. **Constitutional Transplants**. Theorectical Inquiries in Law, v. 10, n. 2, p. 535–560, 2009.

ISROILOV, B. e ALIMOV, G. e TOSHEV, B. Prosecution of Legal Entities: History, Theory, Practice and Proposals. In: VIII INTERNATIONAL SCIENTIFIC AND PRACTICAL CONFERENCE "CURRENT PROBLEMS OF SOCIAL AND LABOUR RELATIONS", 2021, Russia. Anais... Russia: Atlantis Press, 2021. p. 294–298.

LANGER, M. **From legal transplants to legal translations: the globalization of plea bargaining and the Americanization thesis in criminal procedure**. Harvard International Law Journal, v. 45, n. 1, p. 1–64, 2004.

LAUNAY, Robert. Montesquieu: the Specter of Despotism and the origins of comparative law. RILES, ANNELISE (Org.). **Rethinking the Masters of Comparative Law**. Oxford: Hart Publishers, 2001. p. 24–40.

LÊ, Văn Cảm. **75 năm hình thành, phát triển của hệ thống pháp luật hình sự Việt Nam và định hướng tiếp tục hoàn thiện (1945-2020)**. Hà Nội: NXB Chính trị Quốc gia Sự thật, 2020.

LEGRAND, Pierre. **European Legal Systems are not Converging**. International & Comparative Law Quartely, v. 45, n. 1, p. 52–81, 1996a.

LEGRAND, Pierre. **How to Compare Now**. Legal Studies, v. 16, n. 2, p. 232–242, 1996b.

LEGRAND, Pierre. **The Impossibility of Legal Transplant**. Maastricht Journal of European and Comparative Law, v. 4, p. 111–124, 1998.

LEGRAND, Pierre. What "Legal Transplant"? NELKEN, D.; FEEST, J. (Org.). **Adapting Legal Culture**. Oxford: Hart Publishing, 2001. p. 55–69.

LEMPERT, R. **A Jury for Japan?** American Journal of Comparative Law, v. 40, n. 1, p. 37–71, 1992.

LUONG, V H. **Resolution in The Village: Tradition and Transformation in North Vietnam, 1925-1988**. Honolulu: University of Hawaii Press, 1992.

MAHY, Petra e RAMSAY, Ian. **Legal Transplants and Adaptation in a Colonial Setting: Company Law in British Malaya**. Singapore Journal of Legal Studies, p. 123–150, 2014.

MATTEI, Ugo e NADER, Laura. **Plunder: When the Rule of Law is Illegal**. Malden: Wiley-Blackwell, 2008.

MERRYMAN, J H. **On The Convergence (and Divergence) of The Civil Law and The Common Law**. Stanford Journal of International Law, v. 17, n. 2, p. 357–388, 1981.

MESTRE, A. **Les personnes morales et le problème de leur responsabilité pénale**. 1899. Thèse – Paris, 1899.

MUNDAY, Roderick. Accounting for an Encounter. LEGRAND, P.; MUNDAY, R. (Org.). **Comparative Legal Studies: Traditions and Transitions**. Cambridge: Cambridge University Press, 2003. p. 3–28.

NEILSON, William A W. Competition Laws for Asian Transitional Economies: Adaptation to Local Legal Cultures in Vietnam and Indonesia. LINDSEY, T. (Org.). **Law Reform in Developing and Transitional States**. London: Routledge, 2006. p. 291–316.

NELKEN, David. Beyond the Metaphor of Legal Transplants?: Consequences of Autopoietic Theory for the Study of Cross-Cultural Legal Adaptation. PRIBAN, J.; NELKEN, D. (Org.). **Law's New Boundaries: The Consequences of Legal Autopoiesis**. Aldershot: Ashgate Pub Ltd, 2001. p. 265–302.

NELKEN, David. Comparatists and Transferability. MUNDAY, R.; LEGRAND, P. (Org.). **Comparative Legal Studies: Traditions and Transitions**. Cambridge: Cambridge University Press, 2003. p. 437–466.

NGÔ, Huy Cương. Sự ảnh hưởng của pháp luật Pháp tới pháp luật Việt Nam. RAULIN, A. D. e colab. (Org.). **Ảnh hưởng của truyền thống pháp luật Pháp với pháp luật Việt Nam**. Hà Nội: NXB Đại học Quốc gia Hà Nội, 2016. p. 95–115.

NGUYỄN, Ngọc Hoà (Org.). **Bình luận khoa học Bộ luật Hình sự năm 2015, được sửa đổi, bổ sung năm 2017 (Phần chung)**. Hà Nội: NXB Tư pháp, 2017.

NGUYỄN, Ngọc Huy. **Quốc triều Hình luật (Quyển A)**. Sài Gòn: Viet Publisher Thư Quán, 1989.

NGUYEN, Ngoc Huy e TA, Van Tai. **The Le Code: Law in Traditional Vietnam—A Comparative Sino-Vietnamese Legal Study with Historical-Juridical Analysis and Annotations**. 1. ed. Athens: Ohio University Press, 1987. v. 3.

NGUYỄN, Văn Hương. **Trách nhiệm hình sự của pháp nhân thương mại theo Bộ luật hình sự năm 2015**. Tạp chí Luật học, n. 4, 2016.

NGUYỄN, Văn Quân. Dấu ấn của hiến pháp và thể chế của nền cộng hoà thứ 3 của Pháp tới nội dung Hiến pháp năm 1946. VĂN PHÒNG QUỐC HỘI (Org.). **Hiến pháp năm 1946. Những giá trị lịch sử**. Hà Nội: NXB Chính trị Quốc gia Sự thật, 2017. p. 371–380.

NICHOLSON, Penelope. **Borrowing court systems: the experience of Socialist Vietnam**. Leiden; Boston: Martinus Nijhoff Publishers, 2007. (London-Leiden series on law, administration and development, v. 10).

OECD. **Liability of Legal Persons for Corruption in Eastern Europe and Central Asia**. . Paris: OECD, 2015. Disponível em: <https://www.oecd.org/corruption/acn-liability-of-legal-persons-2015.pdf>.

ÖRÜCÜ, Esin. **Law as Transposition**. International & Comparative Law Quartely, v. 51, p. 205, 2002.

PARAMONOVA, Svetlana. **Criminal law in Russia**. Alphen aan den Rijn: Wolters Kluwer, 2021.

PARK, Young Ho. Xử lý hình sự đối với pháp nhân tại Hàn Quốc và quy định xử phạt cả hai bên. In: TRÁCH NHIỆM HÌNH SỰ ĐỐI VỚI PHÁP NHÂN, 25/10 2018, Hà Nội. Anais... Hà Nội: Toà án nhân dân tối cao, 25/10 2018. p. 4–7.

POUND, Roscoe. **The Formative Era of American Law**. Boston: Little, Brown & Co, 1938.

QUIGLEY, John. **Socialist Law and the Civil Law Tradition**. The American Journal of Comparative Law, v. 37, n. 4, p. 781–808, 1989.

RILES, A. **A New Agenda for The Cultural Study of Law: Taking on The Technicalities**. Buffalo Law Review, v. 53, n. 3, p. 52–65, 2005.

RITTICH, K. **The Future of Law and Development: Second Generation Reforms and The Incorporation of The Social**. Michigan Journal of International Law, v. 26, n. 1, p. 199–243, 2004.

SACCO, Rodolfo. **Legal Formants: A Dynamic Approach to Comparative Law (Installment I of II)**. The American Journal of Comparative Law, v. 39, n. 1, p. 1–34, 1991a.

SACCO, Rodolfo. **Legal Formants: A Dynamic Approach to Comparative Law (Installment II of II)**. The American Journal of Comparative Law, v. 39, n. 2, p. 343–401, 1991b.

SAVIGNY, Friedrich Karl Von. **The Vocation of Our Age for Legislation and Jurisprudence**. Tradução Abraham Hayward. Union: The Lawbook Exchange, 2002.

SHI, Wei. **Globalization and Indigenization: Legal Transplant of a Universal TRIPS Regime in a Multicultural World**. American Business Law Journal, v. 47, n. 3, p. 455–508, 2010.

SIDEL, Mark. **The constitution of Vietnam: a contextual analysis**. Oxford; Portland, Or: Hart Pub, 2009. (Constitutional systems of the world).

SIEMS, Mathias. The Curious Case of Overfitting Legal Transplants. ADAMS, M.; HEIRBAUT, D. (Org.). **The Method and Culture of Comparative Law: Essays in Honour of Mark Van Hoecke**. Oxford: Hart Publishing, 2014. p. 133–146.

TA, Van Tai. **Vietnam's Code of the Lê Dynasty (1428-1788)**. The American Journal of Comparative Law, v. 30, n. 3, p. 523–554, 1982.

TAMANAHA, Brian Z. **A General Jurisprudence of Law and Society**. Oxford: Oxford University Press, 2001.

TEUBNER, Gunther. **Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences**. Modern Law Review, v. 61, p. 11–32, 1998.

THOMAS, C. **Law and Neoclassical Economic Development in Theory and Practice: Toward an Institutionalist Critique of Institutionalism**. Cornell Law Review, v. 96, n. 4, p. 967–1024, 2011.

TRẦN, Trọng Kim. **Việt-Nam Sử-lược**. Sài Gòn: Bộ-Giáo-Dục, 1971.

TWINNING, William. **Social Science and Diffusion of Law**. Journal of Law and Society, v. 32, n. 2, p. 203–240, 2005.

VŨ, Quốc Thông. **Pháp Chế Sử Việt-Nam**. Sài Gòn: Tủ Sách Đại Học Sài Gòn, 1971.

VŨ, Văn Mẫu. **Dân-luật Khái-luận**. 2. ed. Sài Gòn: Bộ Quốc-gia Giáo-dục, 1961.

WATSON, Alan. **Comparative law and legal change**. Cambridge Law Journal, v. 37, n. 2, p. 313–336, 1978.

WATSON, Alan. **Legal Transplant: An Approach to Comparative Law**. Edinburgh: Scottish Academic Press, 1974.

WATSON, Alan. **Legal Transplants and European Private Law**. Electronic Journal of Comparative Law, v. 4.4, 2000.

WHITMAN, James Q. **Western Legal Imperialism: Thinking About the Deep Historical Roots**. Theorectical Inquiries in Law, v. 10, n. 2, p. 305–332, 2009.

WISE, Edward M. **The Transplant of Legal Patterns**. The American Journal of Comparative Law, v. 38, p. 1–22, 1990.

WORLD BANK. **Initiatives in Legal and Judicial Reform**. . Washington DC: World Bank, 2002.

ZIMMERMAN, Reinhard. **Civil code and civil law: the "Europeanization" of private law within the European Community and the re-emergence of a European legal science**. Columbia Journal of European Law, v. 1, n. 1, p. 63–105, 1994.