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# Class Actions in Environment Disputes: Lessons from the United States and Prosects in Vietnam

## Abstract

Decision No. 1658/QĐ-TTg dated October 1, 2021, of the Prime Minister approving the National Strategy on Green Growth for the 2021-2030 period, with a vision to 2050, has identified the green economy as a strategic orientation that Vietnam must aim for. To ensure the success of this strategy, the State must use many tools as driving forces, such as finance, technology, communication, and education, and especially indispensable legal tools. The law, on one hand, must have a guiding effect through regulations paving the way to encourage investment and development, and, on the other hand, must have a higher deterrent effect through strengthening and >facilitating litigation mechanisms towards sustainable environmental protection. A class action is a legal mechanism that allows a group of people with similar interests to jointly sue a defendant through common representation. This model is particularly effective in environmental cases, where the damage is often widespread and affects a large community. In some countries, class action with an opt-out mechanism has been recognized for a long time, but in Vietnam, the current law has not yet fully recognized the right class action mechanism, especially in the environmental field. In fact, the 2015 Civil Procedure Code and the 2020 Environmental Protection Law have some fundamental provisions on

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collective lawsuits that, however, need to be improved. Learning from the United States' legal model will help Vietnam perfect the class action model in the future, aiming to protect the environment more effectively and fairly. The paper uses the methods of analysis, comparison, and synthesis to achieve the above research objectives.

**KEYWORDS:** sustainable development, environmental dispute, class action, opt-in, opt-out

## 1 | Introduction

The global environment, including Vietnam, faces serious issues that affect people's lives. Air pollution in major cities is a particularly alarming problem<sup>[1]</sup>. Moreover, rivers and canals are also seriously polluted by untreated wastewater, threatening clean water sources for humans. The problem of soil pollution due to agrochemicals and plastic waste is also one of the top concerns of Vietnam today.<sup>[2]</sup> Living in polluted conditions affects both individuals and future generations, impacting their material and spiritual lives. As environmental changes lead to resource depletion and a conflict between protection and economic development, the need for sustainable practices has become urgent. Vietnam is working to address these challenges, aiming for net-zero emissions by 2050.<sup>[3]</sup>

In examining the causes of this issue, large-scale projects and industrial parks are significant polluters, and marginalized groups often struggle to seek justice due to limited resources. The class action mechanism has emerged as a vital tool for empowering communities to address complex disputes and pursue social justice. Cases in Vietnam in the past, like Vedan (2008) and Formosa (2016), illustrate how the lack of this mechanism complicates the resolution of environmental disputes and hinders individuals

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<sup>1</sup> Angela Pratt, Ramla Khalidi, "Vietnam's Heavy Air Pollution Needs Stronger Action" *United Nations Development Programme Vietnam*, 5 June 2024.

<sup>2</sup> "Environmental Pollution Remains Big Challenge for Hanoi" *Vietnam News*, 7 June 2024.

<sup>3</sup> Thuy Dung, "Vietnam on path to achieve its net - zero emissions goal" *Government News*, November 30, 2023.

from reclaiming their public rights.<sup>[4]</sup> Since then, despite numerous revisions to the legal system, class action mechanisms in Vietnam's environmental law remain relatively new. This area needs further study to enhance the development and implementation of class actions for dispute resolution, aiming to improve efficiency and minimize resource wastage in legal proceedings.<sup>[5]</sup>

Research on class action lawsuits within Vietnam is therefore still limited, primarily focusing on general class action lawsuits and specifically on those concerning labor and consumer rights protection. In the environmental sector, research efforts in Vietnam have primarily focused on promoting the right to file class actions, introducing foreign legal frameworks, providing a brief overview of Vietnam's procedural law, and addressing only disputes related to environmental damage compensation. These discussions suggest that Vietnam should recognize the initiation of class action lawsuits for resolving environmental disputes. Therefore, this paper endeavors to clarify how class action lawsuits contribute to settling environmental disputes to promote the implementation of class action for the environmental sector in Vietnam, specifically:

- (i) Distinguish the features of class action lawsuits compared to lawsuits under the authorized representative mechanism, as well as explain environmental disputes. This will help determine the necessity of recognizing the class action lawsuit mechanism in resolving environmental disputes.
- (ii) Investigate the legal framework for class action lawsuits in Vietnam, particularly for environmental disputes. It will analyze the interplay between various legal documents and regulations, including the Civil Procedure Code, the Law on Environmental Protection, the Labor Code, and the Law on Protection of Consumer Rights, which has never been done in previous studies.
- (iii) Examine foreign law related to class action lawsuits in greater detail, particularly focusing on their operation, applicable requirements, and compare it with Vietnamese law to see the legal gaps that Vietnam needs to fill, especially the opt-out mechanism and litigation

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<sup>4</sup> Do Hung, "Around the Vedan case: Justice has won" *People's Police Newspaper*, 12 August 2010.

<sup>5</sup> Nguyen Minh Duc, "It's Time for a Class Action Lawsuit" *Thanh Nien Newspaper*, 19 October 2019.

funding. The foreign law used in the paper is that of the United States (the U.S.), for its long and successful history of class action lawsuits that could offer important insights for Vietnam.

- (iv) And propose recommendations for class action lawsuits for environmental disputes in Vietnam, ultimately contributing to a sustainable living environment and fostering a fair and civilized society.

## 2 | Theoretical Framework

### 2.1. Concept of Environmental Dispute

Environmental disputes stem from international practices in adjudicating environmental lawsuits since the early twentieth century. Although the term first appeared in Vietnam in the 1980s, it currently lacks a specific legal definition, leading to various interpretations. Scholar Vu Thu Hanh said that “Environmental disputes are conflicts between organizations, individuals, communities, and countries arising in the process of exploiting and using natural resources and the environment towards environmental protection and sustainable development”<sup>[6]</sup>. However, this perspective may be somewhat limited, as state agencies can also serve as participants in these disputes, representing collective interests in class actions. Author Pham Van Vo notes that environmental disputes arise from contradictions and disagreements over the exploitation, use, and protection of environmental resources.<sup>[7]</sup> This author has a more comprehensive overview of the subject, rather than directly stating which subjects of environmental disputes include. Vietnam’s Law on Environmental Protection 2020, specifically Article 162, defines environmental disputes as conflicts over the rights and responsibilities related to environmental protection, including pollution sources, environmental degradation, and liability for remediation.

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<sup>6</sup> Vu Thu Hanh, *Environmental Law Textbook* (Vietnam National University of Hanoi Press, 2021), 356. “Environmental disputes are conflicts between organizations, individuals, communities, and countries arising in the process of exploiting and using natural resources and the environment towards environmental protection and sustainable development.”

<sup>7</sup> Pham Van Vo, *Lecture on Environmental Law* (National Political Truth Publishing House, 2023), 199.

These disputes can arise among individuals, state agencies, enterprises, and non-governmental organizations, typically involving rights and obligations concerning environmental issues. Claims for damages are just one aspect of these broader disputes.

For us, environmental disputes have unique characteristics, primarily focusing on environmental issues. They involve diverse participants, including communities and nations, and center around infringed or threatened environmental rights and interests. The damages can impact both individual and community interests, which may often lead to class action claims. Moreover, the term “environmental dispute” also covers a wide range of contexts, including administrative, civil, and criminal matters. An administrative environmental dispute arises between competent authorities when announcing policies that are contrary to regulations or violate environmental principles. Civil disputes over the environment relate to environmental pollution and environmental damage. Class action lawsuits for environmental issues are often used in this field. Finally, in the criminal field, criminal sanctions are applied to environmental crimes<sup>[8]</sup>. Therefore, within the scope of this paper, the authors would like to mention only environmental civil disputes.

## 2.2. Concept of Class Action Lawsuit

Class action lawsuits originated from medieval English law’s Bill of Peace, aimed at preventing overlapping trials. This idea spread to North America, with Congress allowing collective lawsuits in 1842. The U.S formally recognized class actions in 1938 through Rule 23 of the Federal Rules of Civil Procedure (FRCP).<sup>[9]</sup> The historical development of class action lawsuits traces back to representative lawsuits, seen as precursors to modern class actions. Many jurisdictions, including Vietnam, allow state agencies to sue citizens. In Germany and Switzerland, private associations could file public interest lawsuits since the early nineteenth century, while Canada permits individuals to informally act in the public interest.<sup>[10]</sup> According to the Cambridge

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<sup>8</sup> Chapter XIX stipulates 12 articles as environmental crimes (Articles 235 to 246).

<sup>9</sup> Marcin Raymond, Searching for the Origin of the Class Action” *Catholic University Law Review*, 23 (1974): 515.

<sup>10</sup> Debora Hensler, “The Globalization of Class Actions” *Annals of the American Academy of Political and Social Science*, Vol. 622 (2009): 662.

Dictionary, a class action is a case decided in a court and organized by a group of people who all have the same legal problem. In the American Dictionary, it is a legal action for the benefit of a large group of people claiming to have suffered similar harm.<sup>[11]</sup> As featured in Black's Law Dictionary, a class action is said as a legal action involving a large group or class of people, without having every member of the class join the action, in which a few individuals initiate a court case, becoming representatives of the group.<sup>[12]</sup>

From a legal standpoint, class action regulations exist in many countries. In Thailand, a class action lawsuit enables a plaintiff to sue a defendant to safeguard their own interests and those of others with similar damages.<sup>[13]</sup> In the U.S, class actions are recognized at both the state and federal levels. They allow one or more members of a class to sue or be sued as representatives for all members if specific requirements are met<sup>[14]</sup>. In Australia, class actions, or "representative proceedings," are governed by Part IVA of the Federal Court of Australia 1976. This legal process allows a small group, known as class representatives, to represent a larger group, or "class," in a lawsuit. A minimum of seven individuals must be involved.<sup>[15]</sup> In Indonesian law, class action lawsuits are governed by civil procedural law, specifically in the Environmental Management Law (No. 41 of 1999), Forestry Law (No. 41 of 1999), Consumer Protection Law (No. 8 of 1999), and Indonesian Supreme Court Regulation No. 1 of 2002 on class action procedures.<sup>[16]</sup>

In Taiwan, class action was first recognized in the 1935's revision of the Civil Procedure Code, permitting parties with shared interests to designate representatives to sue or be sued on their behalf.<sup>[17]</sup> In 1994, the Consumer Protection Act strengthened consumer rights by allowing class actions. This enables affected parties to join lawsuits when they suffer similar damages, as publicized by the Court under Article 41 of the Civil Procedure Code.<sup>[18]</sup> If goods or services endanger consumers' health or safety, authorities can

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<sup>11</sup> "Class action," [in:] *Cambridge Dictionary*, <https://dictionary.cambridge.org/dictionary/english/class-action>. [accessed: 3.10.2025].

<sup>12</sup> "Class action," [in:] *The Law Dictionary*. <https://thelawdictionary.org/class-action/>. [accessed: 3.10.2025].

<sup>13</sup> Article 222 Thailand Civil Procedure Code in English: Class action is a type of civil proceedings involving several injured persons who are affected by the same facts and legal principle or the same ground of damage.

<sup>14</sup> Rule 23 Federal Rules of Civil Procedure.

<sup>15</sup> Federal court of Australia.

<sup>16</sup> Indonesia Supreme Court.

<sup>17</sup> Article 41 Code of Civil Procedure 1930 (amended in 1935).

<sup>18</sup> Article 54 Taiwan Consumer Protection Act 2015.

suspend the business and ask representative groups to file lawsuits on behalf of consumers.<sup>[19]</sup>

Through our study, there are key differences between class action lawsuits and ordinary lawsuits. Class actions involve a group of individuals with a common claim from a specific event, while ordinary lawsuits typically have one or a few plaintiffs with individual claims, requiring separate legal actions. Class actions require a “class recognition/certificate” to be qualified to pursue the lawsuit under a specific procedure, whereas ordinary lawsuits do not have such required criteria. Additionally, ordinary lawsuits are more common, while class actions are often used in some specific legal areas affecting large groups, like consumer protection and environmental issues. To highlight the distinctive features of class action lawsuits and compare them with other types, the following summary table can provide a clear overview.

**Table 1: Comparison of class action lawsuit and ordinary civil lawsuit**

	<b>Ordinary civil lawsuit</b>	<b>Class action lawsuit</b>	<b>Legal standing<sup>[20]</sup></b>
<b>Philosophy</b>	Individualistic	Collectivist/ Distrust of individualism <sup>[21]</sup>	Non-Government Organizations (NGOs) as guardians
<b>Concept</b>	Civil lawsuit	Group representative lawsuit	NGOs Standing
<b>Relationship Interests</b>	Direct Interest (real/ tangible)	Direct Interest (real/ tangible)	Does not have Direct Interest (real/ tangible)
<b>Claims</b>	Material compensation and certain action	Material compensation and certain action	Certain action and out of pocket expenses
<b>Subjects</b>	People who directly harmed	Class representatives, class members	Organizations that fulfill the requirements
<b>Notifications</b>	Not required	Class representatives and class members	Not required

To conclude, class actions for environmental disputes allow one or more members to sue, or to be sued, on behalf of all, if they meet specific

<sup>19</sup> Article 60 Taiwan Consumer Protection Act 2015.

<sup>20</sup> The author further compares legal standing to show a form of representative organizations filing lawsuits to resolve the issue of litigation costs – one of the barriers will be analyzed below.

<sup>21</sup> Author Dhahi K.Gumarya argues that class action is a distrust of individualism, but the authors argue that class action is a complementary method, a community-based approach rather than a complete rejection of individualism.

requirements to protect collective rights impacted by environmental violations. Given the unique nature of these disputes, it's crucial to research and develop class action lawsuits to promote a sustainable environment. Individuals must be cautious to prevent litigation, whereas leveraging collective action can be more effective.

### 2.3. Vietnamese Legal Framework

The Vietnamese Constitution affirms the principle of the right to live in a healthy environment for human beings.<sup>[22]</sup> Individuals in a healthy living environment have the right to report any unlawful actions by other agencies, organizations, or individuals to seek accountability and justice.<sup>[23]</sup> However, this regulation only addresses the right to complain and report individually, without granting the right to a collective lawsuit.

In contrast, for some areas, the state allows organizations to file lawsuits on behalf of affected groups, aiming to protect community interests and individual rights.<sup>[24]</sup> In marriage and family law, Article 187 of the 2015 Civil Procedure Code allows state agencies, like those responsible for family affairs and children's welfare, as well as the Vietnam Women's Union, to initiate legal actions related to marriage and family. Individuals can also file lawsuits to protect the rights of others according to the Law on Marriage and Family. This means the right to file for divorce extends beyond the involved parties, emphasizing the principle of voluntariness in marriage. Additionally, relatives can petition for a divorce under certain legal circumstances.<sup>[25]</sup> Although not a class action lawsuit, the regulation underscores lawmakers' recognition of individuals' and organizations' rights. It allows them to initiate legal actions to protect the rights of others, marking a significant step in defining who has standing to file lawsuits in environmental disputes. In the field of consumer rights protection, social organizations are also allowed to stand up to protect the interests of consumers when requested.<sup>[26]</sup> Vietnam has three main organizations for consumer protection: the Department of Competition and Consumer

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<sup>22</sup> Article 43 of the 2013 Constitution.

<sup>23</sup> Article 30 of the 2013 Constitution.

<sup>24</sup> Article 187 of the Civil Procedure Code 2015.

<sup>25</sup> Clause 2, Article 51 of the Law on Marriage and Family 2014.

<sup>26</sup> Clause 7, Articles 4, 49, 50 of the Law on Consumer Protection 2023.

Protection (VCCA) under the Ministry of Industry and Trade, the Vietnam Association of Standards and Consumer Protection (VINASTAS) that helps consumers safeguard their rights, and the Vietnam Consumer Protection Association (VICOPRO), which focuses on specific areas like functional foods, cosmetics, and household appliances.

Class action lawsuits in labor have been recognized for a long time, since the implementation of the 1994 Labor Code (Article 157).<sup>[27]</sup> This reflects Vietnamese society's ongoing concern for and protection of stable labor relations. Organizations representing employees have been granted specific rights, including the right to represent lawsuits and participate in court proceedings.<sup>[28]</sup> The representative organization of the labor collective can initiate a lawsuit to protect the group's rights and interests, either when designated by an employee or when acting on behalf of one or more employees.<sup>[29]</sup> Trade unions represent the working class and employees, with grassroots unions seen as legitimate representatives of labor. They have the authority to engage in civil procedures and act as representatives in court for labor disputes.<sup>[30]</sup> Vietnamese law effectively supports collective lawsuits for labor disputes, empowering workers to unite and address grievances more forcefully.

The concept of class action lawsuits for environmental issues in Vietnam is not yet clearly defined by lawmakers. In fact, Article 186 of the Civil Procedure Code 2015 only allows individuals, agencies, and organizations to file civil lawsuits independently or through representatives. It also permits representative bodies to initiate lawsuits for public interest or on behalf of a collective group.<sup>[31]</sup> Clause 2 of Article 188 of the 2015 Civil Procedure Code allows multiple parties to jointly file a lawsuit concerning related legal relationships. The Court may also consolidate many related cases into one, following legal requirements.<sup>[32]</sup> This provision clearly demonstrates the Court's discretion, not the plaintiff's intent.

From the above information, we can see that although the current Vietnamese law recognizes the initiation of a lawsuit through a representative, clear procedural guidance for pursuing class action lawsuits – particularly

<sup>27</sup> Clause 2, Articles 57, Constitution 2013.

<sup>28</sup> Clause 3, Article 85 of the Civil Procedure Code 2015.

<sup>29</sup> Clause 2, Article 187 of the Civil Procedure Code 2015.

<sup>30</sup> According to Guidance No. 92/HD-TLD dated August 31, 2023 of the Vietnam General Confederation of Labor.

<sup>31</sup> Article 187 of the Civil Procedure Code 2015.

<sup>32</sup> Article 42 of the Civil Procedure Code 2015.

in environmental matters – remains absent from both the 2014 and 2020 iterations of Vietnam’s Law on Environmental Protection. The complexity arises from challenges in assessing damages and the widespread impact on many people and areas, as seen in incidents like the Formosa case in 2016,<sup>[33]</sup> which was governed by the Law on Environmental Protection 2014. Subjects who wanted to protect their rights had to file their own lawsuits, leading to a large number of applications accepted by the Court.<sup>[34]</sup> The Court, after that, rejected the individuals’ petitions due to their failure to provide documentation of damages. This issue was later addressed in Decision 1880 by the Prime Minister on October 13, 2016, which set the compensation standard.<sup>[35]</sup>

In this case, the affected individuals had the right to sue, but individually limiting their ability to leverage community strength and complicating damage assessment. The State’s role in negotiations with Formosa Company was mainly administrative, and there was currently no clear mechanism defining the State’s involvement as a party in this issue. The Law on Environmental Protection 2020 introduces more detailed provisions than the 2014 version, focusing on compensation for environmental damage and assessing harm. Responsibility for claims and data collection falls on the People’s Committees of all levels and the Ministry of Natural Resources and Environment.<sup>[36]</sup> This regulation shows that lawmakers are increasingly aware of contemporary environmental issues. Assessing environmental damage requires specialized scientific expertise and financial resources. Affected organizations and individuals have the right to seek compensation independently or empower others to pursue it on their behalf when sufficient evidence is available.

Those new provisions may pave the way for similar class action lawsuits, enabling representatives to file civil claims in defense of community

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<sup>33</sup> “Formosa blamed for fish death” *Vietnam News*, 30 June 2016. <https://vietnamnews.vn/society/298928/formosa-blamed-for-fish-death.html>.

<sup>34</sup> Khanh Hoan, “The Court Returns 506 Formosa Petitions of People” *Thanh Nien Newspaper*, 18 October 2016.

<sup>35</sup> The compensation norm under this Decision is 500 million USD. This is the result achieved according to the negotiation between the Vietnamese Government and Formosa Company. This amount is then allocated to the people who suffer losses according to the Government’s assessment based on many different criteria, ensuring publicity, transparency and supervision of State agencies. Hieu Chi, Anh Vu, “How is the 500 Million USD Compensation for Formosa Spent?” *Thanh Nien Newspaper*, 2 July 2017.

<sup>36</sup> Article 131 of the Law on Environmental Protection 2020.

environmental interests, a right previously limited to other areas. Accordingly, it gives State agencies the competence and responsibility to address environmental signs of pollution and to initiate legal proceedings, but there is no sanction for failing to do so, potentially making the regulation ineffective in practice. This regulation should therefore require more careful review and adjustment.

Particularly, Article 131 of the Law on Environmental Protection assigns commune-level People's Committees the duty to seek compensation for environmental damage within their areas. They are, nevertheless, responsible for requesting assistance from the district-level People's Committee to gather and assess evidence of pollution and degradation. Furthermore, the Ministry of Natural Resources and Environment claims compensation for damages and coordinates with provincial-level People's Committees on data collection related to environmental harm across multiple provinces. But currently, Vietnam is restructuring State agencies for a streamlined approach as outlined in Resolution No. 18 of the Party Central Committee from October 25, 2017.<sup>[37]</sup> District-level local governments will cease operations, and the Ministry of Natural Resources and Environment will merge with the Ministry of Agriculture and Rural Development to form the Ministry of Agriculture and Environment starting from July 1st, 2025. After the merger, the responsibility for initiating lawsuits related to compensation for damages will move to the Ministry of Agriculture and Environment. Therefore, the disposition relating to the authority of commune-level and district-level People's Committees needs to be updated to align with the new State structure.

Besides, the Law on Environmental Protection 2020 mandates that environmental disputes must also follow civil law, civil procedure law and related regulations. It highlights that court settlements should align with compensation guidelines for non-contractual damages and civil litigation laws.<sup>[38]</sup> According to Article 133 of the Law on Environmental Protection 2020, damaged parties can initiate lawsuits themselves or authorize others to do so. While the provision aligns with the Civil Procedure Code, the allowance for class action lawsuits is still ambiguous, although it is clearly stated that affected individuals can authorize a representative to act on

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<sup>37</sup> Resolution No. 18 of the Sixth Meeting of the XII Central Committee on a number of issues on continuing to renovate and reorganize the apparatus of the lean political system, effective and efficient operation on 25 October 2017.

<sup>38</sup> Articles 133 and 162 of the Law on Environmental Protection 2020.

their behalf in a single case.<sup>[39]</sup> The reason is that, as highlighted in the characteristics section, environmental class actions possess distinctive features that cannot be adequately addressed through the proxy representative mechanism alone.

More on this issue, Vietnamese Courts have differing views on the acceptance of lawsuit petitions initiated through proxy. While Article 186 allows agencies, organizations, and individuals to file lawsuits directly or via legal representatives, many courts may reject petitions by proxy due to its lacking the plaintiff's signature, requested by Clause 2, Article 189 of the Civil Procedure Code 2015.<sup>[40]</sup>,<sup>[41]</sup> The Court therefore tends to only accept authorization to submit a lawsuit petition, not to initiate a lawsuit with the full meaning. This means class action lawsuits using the authorized representative mechanism can face significant challenges if there is no official regulations. And last but not least, although Vietnamese law has quite progressive provisions on the burden of proof in environmental protection field, by providing that organizations and individuals that fully comply with the provisions of the law on environmental protection, have a qualified waste treatment system and can prove that they do not cause environmental damage shall not have to compensate for environmental damage,<sup>[42]</sup> and that the burden of proof relating to the causal relationship between the violation of environmental laws and the damage caused is on the organization or individual that violates or causes environmental pollution,<sup>[43]</sup> the law however does not state clearly who is responsible to prove first the violation act, the plaintiff or the defendant when the case starts. This can create confusion for the litigants when filing a lawsuit and for the court when solving the case.

From this analysis, the authors can identify some key observations as below:

Firstly, with respect to the regulations surrounding the initiation of class action lawsuits, in general, and specifically for environmental disputes,

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<sup>39</sup> Article 85 of the Civil Procedure Code 2015; Article 138 of the Civil Code 2015.

<sup>40</sup> Clause 2, Article 189 of the Civil Procedure Code 2015: "Individuals with full capacity must either file personally or authorize another person to file the application, ensuring that their name and address are included and signed or fingerprinted at the end of the application."

<sup>41</sup> See also Nguyen Van Tien, "Discussing the Authorization to Initiate Lawsuits in Civil Procedures" *Electronic People's Court Magazine*, 8 February 2023.

<sup>42</sup> Clause 4 Article 130 Law on Environment Protection 2020.

<sup>43</sup> Clause 2 Article 133 Law on Environment Protection 2020.

Vietnamese law currently lacks specific and clear provisions. While there are regulations concerning the merger and separation of cases, as well as those regarding the authorization to initiate lawsuits, the application of those rules still largely relies on the competence of the Court. Consequently, many limitations persist in practice, creating challenges for both the public and the agencies responsible for enforcing the law.

Secondly, the current opt-in mechanism, based on the authorization process, needs to be reviewed for clarity. There is no opt-out mechanism to promote maximum social justice. The authors will analyze this mechanism in detail in the upcoming United States' lesson.

Thirdly, the psychology surrounding the reluctance to accept risks, particularly when the law lacks clarity, may cause the Court to hesitate in applying class action lawsuits through existing legal provisions for cases merging or authorized lawsuits,<sup>[44]</sup> although Vietnam's Criminal Code states well that illegal decision-making is also subject to corresponding criminal sanctions.<sup>[45]</sup> Furthermore, there exists a fear of managing high-profile cases, particularly environmental ones that can impact hundreds or even thousands of individuals across large and complex areas. This historical backdrop complicates procedural processes, requiring more time and manpower to navigate. Additionally, many Vietnamese courts are not equipped to handle a significant volume of trials. The unique characteristics of environmental disputes necessitate a high level of professional expertise, which leads judges to be more cautious in accepting such cases. They are acutely aware that an inappropriate judgment could result not only in criminal sanctions and disciplinary measures as prescribed by law but also in political instability and public outrage – consequences that no judge wishes to face.

And, lastly, the fear of litigation among Vietnamese individuals still exists, reflected in the proverb “Vô phúc đáo tụng đình – Unfortunate to be in court.” This is exacerbated by a lack of access to information, particularly for those in rural areas dependent on agriculture and fisheries, making them vulnerable to environmental impacts. The cultural emphasis on “Dĩ hoà vi quý- precious peace” often leads people to avoid confrontation, seeking legal action only when absolutely necessary. Additionally, socio-economic practices in rural Vietnam can hinder access to accurate

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<sup>44</sup> Hai Duyen, “Chief Justice of Ho Chi Minh City People’s Court: Many Pending Cases Due to Judges Fearing Incorrect Rulings” *VNExpress*, 30 July 2015.

<sup>45</sup> Article 371 and 372 Criminal Code 2015.

information, especially in today's digital age, where inadequate infrastructure contributes to the spread of unverified content. Financial barriers also deter individuals from initiating lawsuits, as Article 146 of the Civil Procedure Code 2015 and Resolution No. 326/2016 outline various costs associated with legal proceedings, including evidence collection and damage assessments,<sup>[46]</sup> with the main principle that the plaintiff is obliged to prove.<sup>[47]</sup> In addition, there may be additional lawyer costs.<sup>[48]</sup> Litigation costs significantly impact the decision to sue individually, particularly for low-income people in rural areas who rely on their environment for living and working.

### 3 | Comparative Lesson

The article explores the U.S class action lawsuit law as a case study for Vietnam for three main reasons. Firstly, the U.S has a rich history in this area, inheriting early British regulations like the “Bill of Peace” from the seventeenth century, then refining this mechanism, and leading to its widespread adoption today. Notably, the first-class action lawsuit was recognized by the U.S Federal Court in 1842 through Equity Rule 48.<sup>[49]</sup> It was outlined in Rule 23 of the Federal Rules of Civil Procedure, and state laws, including precedents. The authors of the research paper focused on analyzing the issue at the federal level for a comprehensive perspective.<sup>[50]</sup> Secondly, in the U.S, class action lawsuits have both “opt-out” mechanisms (automatic participation unless you refuse) and “opt-in” mechanisms

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<sup>46</sup> Chapter IX, Section 1 of the Civil Procedure Code 2015.

<sup>47</sup> Article 91 of the Civil Procedure Code 2015.

<sup>48</sup> Article 168 of the Civil Procedure Code 2015.

<sup>49</sup> In 1842, the Supreme Court promulgated Equity Rule 48, “officially recognize representative suits where the parties were too numerous to be conveniently brought before the court but refused to bind absent parties to any resulting judgments.”

<sup>50</sup> Coming from the federal state, the US legal system is relatively complicated. Each state has a separate legal system. At the same time, the federal government maintains a system of federal courts along with first-instance courts in each state. Naturally, each state and federal legal system has its own procedural rules. States enact regulations in areas that federal law does not regulate. Therefore, class actions can be applied differently from state to state.

(voluntary participation). Finally, the U.S litigation financing mechanisms are quite flexible.

### 3.1. Rule 23 of the Federal Rules of Civil Procedure

According to Rule 23, a lawsuit must meet four prerequisites<sup>[51]</sup> to be considered a class action and governed by this provision. The first point is that the class is so numerous that including all members is impractical. In 2011, the U.S District Court for the Northern District of California acknowledged *Wal-Mart v. Dukes* as a class action lawsuit, noting that the number of female employees involved was nearly 1.5 million, marking the highest count since that time.

The second consideration is whether there are common legal or factual questions among the class. This requirement enhances efficiency by allowing the court to address multiple lawsuits together, preventing conflicting judgments and maintaining public confidence in the judicial process. This is especially important for vulnerable groups who may struggle to engage in individual lawsuits. There are many cases of significant harm to communities that may not be recognized as collective, hindering the ability to pursue class actions. A relevant example is the 2013 Pegasus pipeline rupture in Mayflower, Arkansas, where, despite evacuating over twenty households and harming local wildlife, the U.S District Court for the Eastern District of Arkansas reversed its approval of class-action status. In 2017, the U.S Court of Appeals for the Eighth Circuit also affirmed this decision<sup>[52]</sup> and the Court's reasoning was that it failed to prove generality. In other words, the Eighth Circuit determined that Exxon managed the pipeline through separate entities, necessitating an evaluation of each property to assess the damages experienced by each plaintiff.

The third is that claims or defenses of the representative parties are typical of the claims or defenses of the class. This principle of typicality is essential to prevent the abuse of class action lawsuits, ensuring there are no conflicts between the interests of the representative and those of the group. Consequently, the plaintiff must experience the same type of harm

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<sup>51</sup> Rule 23 (a) Prerequisites.

<sup>52</sup> Emily Holtzman, "Widening the Power Gap: The Eighth Circuit's Stringent Requirement for Class Actions in Environmental Contamination Cases" *Missouri Law Review*, No. 2 (2019): 537-560.

and the same legal basis for their claims as the other class members. This not only promotes fairness and upholds the collective interests of the group, but also allows the Court to resolve the case more efficiently, rather than addressing each case individually. The last is that the representative parties will fairly and adequately protect the interests of the class. The adequacy of representation is crucial for class action lawsuits, ensuring that the representative parties and their attorneys have the capacity and resources to pursue the case effectively. This prioritizes group interests, particularly for vulnerable entities that may struggle to sue independently. With knowledgeable representatives and counsel, the Court can be confident that the claim is legitimate and will be thoroughly addressed, minimizing resource waste. The conditions are merely the first requirement for recognizing a class action. Additionally, the Court cannot acknowledge a class action if it does not meet one of the following three categories:<sup>[53]</sup>

The first type: Prosecuting separate actions by or against individual class members risks inconsistent adjudications and incompatible standards for the opposing party. These individual cases could also affect the interests of non-parties, making it difficult for them to protect their rights. This approach is often seen in lawsuits involving common property, funds, or collective contracts, aiming to reduce class distinctions and avoid varied outcomes. Class actions are generally more effective than individual lawsuits, as the damages for each person are typically too small to justify separate legal proceedings.

The second type: The party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class.

The third type: The court determines that common questions of law or fact among class members outweigh individual issues, making a class action the superior method for fairly and efficiently resolving the controversy. Key factors include the class members' interest in controlling separate actions, existing litigation on the matter, the appropriateness of the chosen forum, and the challenges in managing a class action. This type is relatively common for seeking monetary damages when legal issues or common questions arise. Most environmental disputes that require compensation focus on this type.

When the conditions for a class action are met, the proceedings can only move forward if the Court certifies it as a class action. According to

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<sup>53</sup> Rule 23 (b) Type of Class action.

Rule 23(c), the court must promptly determine whether to certify the action after a class representative is involved. This certification order must define the class, its claims, issues, or defenses, and appoint class counsel under Rule 23(g). Certification is crucial as it affirms the commonality among plaintiffs and ensures they are represented and protected by appointed counsel. In case this certification is not achieved, the plaintiff cannot continue as his class representative; however, the plaintiff can still participate in the proceedings as an individual. Therefore, the denial of class certification has been called the “death knell” of the lawsuit.

After issuing the certification, the notification to the other parties is conducted. The remaining group members can choose to participate or not, based on their individual preferences and aspirations<sup>[54]</sup>. If a member opts out of the class action, they will not be bound by the judgment and will forfeit any benefits from a favorable outcome for the class. Reasons for opting out may include a desire for independence, lack of interest in participation, or belief that the potential damages are inadequate. Opting out is a right specific to class action lawsuits in the U.S, and such provisions are not found in Vietnamese law.

### 3.2. Opt-In and Opt-Out Mechanisms

As previously mentioned, the United States also employs another mechanism known as opt-out, in addition to opt-in. With the opt-in mechanism, individuals within a group must take the initiative to register in order to access legal remedies or compensation if they prevail in a lawsuit. This approach ensures the right to individual self-determination; however, it may lead to a limited number of participants, which could weaken the collective strength in litigation.

The opt-out mechanism, introduced in the U.S in 1966, automatically includes group members in a lawsuit class unless they actively choose to opt out within a set timeframe. This process is praised for increasing group size, enhancing the ability to sue, and improving chances of winning, thus promoting social justice. However, if individuals are unaware of this and miss the opt-out deadline, they are automatically included and bound by the court’s ruling. Therefore, the U.S courts must notify

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<sup>54</sup> See FED.R. CIV.P. 23(c)(2).

potential members to protect their right to opt out.<sup>[55]</sup> From this information, the opt-in mechanism emphasizes voluntary participation, but the fear of legal repercussions may hinder social justice. Conversely, the opt-out model could help victims navigate this obstacle, though it raises concerns about coercing individuals who prefer not to join the lawsuit.<sup>[56]</sup> We totally disagree with this perspective because, with opt-out, victims retain their right of self-determination in civil proceedings, which includes the ability to exit the lawsuit.

Upon comparing the current landscape of Vietnamese law to that of the U.S, one can observe notable similarities between the opt-in and opt-out mechanisms prevalent in the U.S law and certain Vietnamese legal provisions. Specifically, in Vietnam, the mechanism for initiating a lawsuit through authorized representation aligns closely with U.S opt-in model. Conversely, when a state agency or social organization initiates a civil lawsuit with the intent of protecting public interests, it parallels the opt-out model in terms of determining both the subjects of the lawsuit and those participating in it. Article 131 of the Law on Environmental Protection, 2023, states that organizations and individuals who suffer damages to their life, health, property, or legitimate interests due to environmental degradation may either pursue claims independently or authorize state agencies, organizations, or other individuals to assess the damages and seek compensation. In this context, when multiple entities collectively authorize another party to initiate a civil lawsuit, it is akin to the choice to participate in the U.S opt-in mechanism.

Under the aforementioned law, if a state agency is responsible for initiating a lawsuit to seek compensation for damage caused by environmental pollution to the community, that agency will serve as the plaintiff in accordance with Article 68 of the Civil Procedure Code 2015. However, the right of the community is not well defined. This lack of specification distinguishes the Vietnamese legal framework from that of the U.S. In the U.S, there is an opt-out mechanism whereby members of the group or community can

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<sup>55</sup> Selma Mezetovic Medic, "Collective Redress is There Way for Both Opt-In and Opt-Out?" *South East European Law Journal*, 9 (2022): 62-81.

<sup>56</sup> Scott Dodson, "An Opt-in Option for Class Actions" *Michigan Law Review*, No. 2 (2016): 171-214. "It is unfair to a defendant opposing [an opt-out] class, so the argument goes, to subject him to possible liability toward individuals who remain passive after receiving notice or who may, indeed, have had no notice of the proceeding; under the previous law, some, perhaps many, of those persons might simply have foregone any claims against the defendant; they might in fact have remained ignorant of having any possible claims."

choose not to participate in the lawsuit from the beginning. In contrast, Vietnamese law does not provide a similar provision. Consequently, if the Court accepts a claim for damages in the public interest made by a state agency or social organization, the amount of damages will be allocated to those victims affected by the environmental harm basing on principles formulated at a later stage. Although victims retain the right to decide whether to accept this compensation, this situation may lead to arbitrariness and a lack of transparency in determining compensation amounts and affected individuals, largely due to the absence of clear regulatory guidance from the outset of the lawsuit.

### 3.3. Litigation Costs Financing

Procedural costs are a significant barrier that needs attention. In the U.S, litigation costs for class actions are manageable, with various options available to support legal expenses. Litigation funding is quite typical for class action lawsuits<sup>[57]</sup> and is the most common method used in the U.S.<sup>[58]</sup> This is financial assistance from a third party unrelated to the lawsuit to fund litigation costs in exchange for a portion of the award if the case is won.<sup>[59]</sup> During certification of a class action, the litigation funding may be required to be disclosed to ensure transparency and avoid conflict of interest.<sup>[60]</sup> In environmental disputes, NGOs or community funds can act as funding intermediaries. Lawyers can access a common pool for upfront litigation costs and receive a percentage of awarded damages if the case is successful, unless they get nothing. This approach encourages lawyers to assess the

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<sup>57</sup> See: Mark Behrens, “Third Party Litigation Funding: A Call for Disclosure and Other Reforms to Address the Stealthy Financial Product That Is Transforming the Civil Justice System” *Cornell Journal of Law and Public Policy*, No. 1 (2024): 1-30.

<sup>58</sup> Some class actions are also financed by public-interest groups or are undertaken by law firms on a pro bono (the law firm waives its fee, undertaking the case pro bono publico, for the public good).

<sup>59</sup> Francesca Pellegrini, *Understanding Litigation Funding: Comparative Perspectives on Regulation, Market Behaviour and Economic Consequences*. Milano: Angeli, 2025.

<sup>60</sup> Federal Rule of Civil Procedure 23 does not explicitly require disclosure of third-party litigation funding in class actions, however, rule 23(e)(2) states that “If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate,” and to make this determination, courts often examine the costs, risks, attorney’s fee, which entails disclosure of litigation funding.

lawsuit's legal aspects, helping to prevent frivolous claims and promoting diligent work for both the collective and their interests, like the U.S class action lawsuits, where representatives must protect the class's interests.

One-way fee shifting is a legal method typically used in cases with limited financial compensation. Under this system, the attorney can only collect fees if the plaintiff wins, and only the plaintiff has this right. Additionally, court approval is required for statutory attorneys' fees, which the defendant must pay along with any remediation costs. This approach is often used in consumer and environmental protection cases.<sup>[61]</sup> In stark contrast to the "loser-pays" principle, the U.S. operates under a framework known as the "American rule." Under this rule, regardless of whether the plaintiff or the defendant prevails, each party is responsible for covering its own procedural fees. This principle enhances access to class action lawsuits, particularly for vulnerable groups, as it eliminates the risk of having to pay the defendant's attorneys' fees in the event of an unsuccessful lawsuit. Notably, this approach aligns closely with Vietnamese law. Article 168 of the Civil Procedure Code 2015 stipulates that legal fees are to be paid according to an agreement between the parties involved and their lawyer, in accordance with the regulations set forth by the law-practicing organization and relevant legal provisions. Generally, these expenses are to be borne by the requester unless the parties agree otherwise. It should also be added that, in the domain of intellectual property, the losing party is responsible for the lawyer's fees,<sup>[62]</sup> which means that it does not apply to the environmental field. Various financial support methods, particularly the recognition of litigation funding, could serve as optimal solutions to facilitate class action lawsuits, which Vietnam can study, develop, and implement.

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<sup>61</sup> The most important of these statutes is the Civil Rights Attorney's Fees Awards Act, 42 U.S.C. sec. 1988, which authorizes the award of reasonable attorney's fees to the prevailing plaintiffs in litigation under 42 U.S.C. sec. 1983.

<sup>62</sup> Clauses 4 and 5, Article 198, Clause 3, Article 205 of the 2005 Law on Intellectual Property amended and supplemented.

## 4 | Conclusion and Lessons for Vietnam

Sustainable development requires long-term efforts and effective regulations to prevent and address environmental pollution while ensuring social justice for future generations. Class action lawsuits can serve as both a legal tool for dispute resolution and a deterrent against environmental violations. The analysis of the U.S approach can provide valuable insights for Vietnam.

Based on our research, we conclude that to effectively build and develop a model of class action for resolving environmental disputes in Vietnam, it is essential to amend the law. This amendment should establish a more open and supportive mechanism for the involvement of the public.

Firstly, the Civil Procedure Code and the Law on Environmental Protection should explicitly acknowledge the ability to initiate class action lawsuits for environmental disputes in Vietnam. This can be achieved by stating that “state management agencies responsible for the environment and socio-professional organizations can file a class action lawsuit to address collective environmental issues.”

Secondly, it is important to clearly define the criteria for a lawsuit to be recognized as a class action. This will ensure that the appropriate procedures for class actions can be applied. The criteria can be inspired by the U.S model, which outlines four conditions: enough subjects, a shared fact, typical claims, and adequate representation.

Thirdly, once a class action lawsuit for environmental disputes is confirmed to meet these conditions, the Civil Procedure Code and the Law on Environmental Protection should include special procedural activities and support mechanisms tailored for this type of lawsuit. Specifically, the recognition of the Court is needed for the class action procedure, followed by mechanisms of representation with opt-out and opt-in choices. This would allow relevant entities to have more options for their rights and interests relating to environment to be more effectively protected.

Fourthly, financial barriers often prevent individuals from pursuing class action lawsuits. To address this, it’s proposed that the Civil Procedure Code and the Law on Environmental Protection implement financial mechanisms to assist vulnerable groups in filing collective environmental lawsuits. The U.S model, which includes a general fund for environmental disputes and recognizes litigation funding, can serve as a helpful reference.

And lastly, it relates to the burden of proof in environmental disputes. To enhance support for resolving environmental disputes, consideration should be given to applying the principle of proof from labor dispute

resolution or consumer rights protection cases, where the defendant is responsible for proving first their innocence<sup>63</sup>, by stating well in the Law on Environment Protection and in the Code of Civil procedure that in environmental disputes, the plaintiff has no obligation to prove the fault of the presumed violators, and the defendant should be obliged to prove that they have not caused environmental pollution.

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<sup>63</sup> Clause 1 Article 91 Code of Civil procedure 2015.

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