

## THE REALITY OF TRADING EXOTIC SPECIES IN VIETNAM - LEGAL ISSUES IN ENVIRONMENTAL PROTECTION

*Mai Kim Hân<sup>1</sup>*

<sup>1</sup> Faculty of Law, Nam Can Tho University

**Abstract:** *The trading of exotic species is growing widely in Vietnam, to satisfy the ornamental needs of a segment of the population, mainly the younger generation. However, the boom in trading activities poses alarming risks to Vietnam's ecosystem, animal lives and many rare flora and fauna species are seriously threatened. Based on the analysis of risks to environmental security caused by the trading of alien species, the article presents legal issues that need to be resolved in controlling the trading of alien species in particular and legal issues on environmental protection in general in Vietnam.*

**Keywords:** *alien species, environmental protection, threats, wild animals.*

### I. QUESTION

Over the past many years, our Party has issued numerous directives on environmental protection, as specifically reflected in the documents of the 6th to the 13th National Party Congresses. Typical examples include: the Platform for National Construction in the Transition to Socialism in 1991, as amended and supplemented in 2011; the Socio-economic Development Strategies for the periods of 1991-2000, 2001-2010, 2011-2020, and 2021-2030; Directive No. 36-CT/TW dated June 25, 1998 of the Politburo "On Strengthening Environmental Protection in the Period of Industrialization and Modernization of the Country"; Resolution No. 41-NQ/TW dated November 15, 2004 of the Politburo "On Environmental Protection in the Period of Accelerating Industrialization and Modernization of the Country". To implement the Party's directives, our State has continuously supplemented and updated the actual situation to build an increasingly perfect Environmental Protection Law. The Environmental Protection Law of 2020 has demonstrated a clear transformation of the Party's viewpoint on environmental protection, from the initial general regulations on environmental protection and through subsequent amendments and replacements, the State has institutionalized the Party's viewpoints on proactive pollution control; strengthening the

role of the State and the community in environmental protection in general and activities related to wildlife in particular.

Recognizing the important role of biodiversity and the threats facing national biodiversity, the Vietnamese Government has issued Decision No. 35/2003/QĐ-TTg dated March 6, 2003 assigning the Ministry of Natural Resources and Environment (MONRE) the responsibility of chairing the drafting of the Biodiversity Law. The Biodiversity Law was drafted for the first time based on broad consultation to allow all citizens and international organizations to contribute. The Law also helps Vietnam fully implement its obligations under international commitments and affirms Vietnam's position as a member of the International Union for Conservation of Nature (IUCN). The draft Biodiversity Law was submitted to the National Assembly for comments in early 2007, and the first draft will be officially completed in July 2006. Recognizing the expertise of BirdLife International in the list of threatened species both internationally (as the official commission of the IUCN for compiling the Red List of Threatened Species) and regionally (including Vietnam and other countries), the Environmental Department of the Ministry of Natural Resources and Environment has requested BirdLife International to conduct a study to collect sample data including threatened species and invasive species to serve the recommendations on the content of the Biodiversity Law.

In this context, recognizing that the current legal regulations on environmental protection are still inconsistent, have many loopholes and inadequacies and therefore do not meet the requirements of state management in this field. Therefore, this article aims to analyze the main provisions of the law on the trade of invasive species and environmental protection law in Vietnam, assess the practice of law enforcement and thereby propose appropriate measures to improve the system of legal norms in the field of environment to prevent the transportation and trade of wildlife, especially illegal invasive species, which is also the cause of the risk of extinction of Vietnam's wildlife species.

## **2. THE CURRENT STATE OF EXOTIC SPECIES TRADE IN VIETNAM AND ENVIRONMENTAL PROTECTION ISSUES**

### **2.1. The Current State of Exotic Species Trade in Vietnam**

### ***2.1.1. Overview of Exotic Species***

According to Clause 18, Article 3 of the Biodiversity Law of 2008, an exotic species is a species that appears and develops in an area that is not its natural habitat. They are introduced into a new environment through human activities. Exotic species can be imported from other countries or created through selective breeding. Exotic species often have the ability to reproduce rapidly, adapt, and multiply greatly in the new environment, competing with native species. This can lead to serious changes in the natural ecological structure, affecting biodiversity and disrupting the ecological balance. Invasive alien species are exotic species that encroach on habitats or harm native species, disrupting the ecosystem where they appear and develop (Clause 19, Article 3 of the Biodiversity Law of 2008). In Vietnam, invasive alien species have also had a significant impact on freshwater systems and agriculture, causing severe economic damage. For example, the golden apple snail, a species native to South America introduced into Vietnam in the late 1980s, has become one of the most dangerous pests for rice cultivation and has caused the loss of millions of dollars in rice production annually (Bui Ngoc Thanh 2013).

Within the context of numerous invasive alien species being bought and sold for human profit, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) report has found that the negative impacts of invasive species on human habitats are extremely severe. Invasive alien species are the primary cause of 60% and the sole cause of 16% of recorded global extinctions of animal and plant species, and at least 218 invasive alien species have caused over 1,200 local extinctions. Similarly, 85% of recorded impacts are negative on human quality of life (Thanh Cong, 2023). Lessons from the negative impacts of COVID-19 globally highlight the urgent need to apply appropriate management methods to minimize the risk of future infectious disease outbreaks originating from animals, to ensure human health and economic stability in Vietnam.

### ***2.2.2. The Practice of Buying and Selling Invasive Alien Species in Vietnam***

**Firstly**, officials responsible for managing the import of alien species often lack knowledge, are passive, and have limited experience, making it difficult to control the

import of alien species. This is particularly evident when officials proactively permit the import of invasive alien species, either out of ignorance of their invasive nature or knowingly due to economic benefits. This highlights deficiencies in control measures, as well as limitations in the professional qualifications and management capabilities of officials at all levels.

According to a survey by the General Department of Environment, up to 40% of central-level officials and 60% of officials at the Department of Natural Resources and Environment or the Department of Agriculture and Rural Development provided incorrect answers and did not fully understand the regulations on the management of alien species under the Biodiversity Law of 2008. Approximately 85-100% of central-level officials and 90% of local officials assessed that their agencies lacked the capacity to manage alien species due to a shortage of knowledgeable personnel, technical expertise, and financial resources. Most central and local officials interviewed had not participated in any research or projects related to alien species (People's Representative Electronic Newspaper, 2023).

The law enforcement force for the management and control of alien species is relatively small. Moreover, the buying and selling of these species primarily occurs through social media rather than openly in shops or businesses, making it difficult to detect, handle, and control. Some individuals, driven by immediate economic benefits, still deliberately import and cultivate invasive alien species. The sale of red-eared sliders for release during holidays continues to occur in the market. Therefore, the risks posed by these species to the environment, biodiversity, and related industries persist.

**Secondly**, the management activities among competent state agencies are often inconsistent, with conflicts arising between authority and interests. The management of invasive alien species by the state agency system, especially at the import stage, still lacks consistency. Currently, both the Ministry of Agriculture and Rural Development and the Ministry of Natural Resources and Environment are assigned to manage alien species. Accordingly, the Ministry of Agriculture and Rural Development has full authority to decide whether or not to import alien species; while the Ministry of Natural Resources and Environment is granted the authority to manage domestic resources, including alien species. These regulations have created conflicts and contradictions

between the duties, responsibilities, and interests of each ministry, leading to inconsistency among state agencies that are simultaneously conducting a management activity.

Although the responsibility for managing alien species has been recognized in many legal documents, the specific duties of ministries and sectors are still unclear and dispersed. For example, the agricultural sector is authorized to grant permits for the importation of alien species into Vietnam, but the management of alien species domestically is the responsibility of the natural resources and environment sector. However, the overlap in functions, duties, and lack of coordination among ministries is the reason for the low management effectiveness. This reality poses a requirement, the need to assign responsibility to a specific unit to manage alien species, from the import stage to breeding and control.

**Thirdly**, the practice of enforcing administrative, civil, and criminal law in handling violations. Although the Law on Biodiversity strictly prohibits the introduction and development of alien species, in practice, many species have been illegally distributed, especially from the release of red-eared turtles. Illegal acts are not handled by law enforcement agencies, but often by the reflections of the media. The law still has many "loopholes" in specifically regulating the methods of buying, selling, transporting, and storing alien species, notably alien species that are widely traded for breeding as ornamental animals, pets... have not been strictly controlled.

According to the Education for Nature-Vietnam (ENV), from January to September 2023, authorities confiscated over 2,000 live wild animals and arrested individuals involved in 110 violations. Out of the 145 wildlife-related cases brought to trial during this period, 63 resulted in prison sentences. Additionally, ENV recorded a total administrative fine of 13.4 billion VND imposed on individuals involved in the illegal advertisement, keeping, and trading of wildlife. Many of these cases involved the advertising and trading of exotic species, often linked to the keeping of exotic animals. Most of the advertising and trading of exotic species occurred on various social media platforms such as Facebook, YouTube, Zalo, Instagram, TikTok, and other online channels, albeit on a smaller scale.

In 2021 alone, the country recorded over 3,700 wildlife-related violations. Among these, illegal advertising and selling accounted for 2,594 cases, followed by nearly 1,000 cases involving illegal possession and captivity, and over 180 cases of illegal trading and transportation of wildlife, including exotic species. According to ENV's report, in the first three months of 2022, the organization recorded 808 cases of wildlife buying and selling violations. Of these, 46 involved large-scale transportation and trading of wildlife; 588 involved advertising and retail sales of wildlife; and 164 involved possession and captivity of wildlife.

**Fourthly**, the reality shows that the biosecurity at border gates is still simple and outdated, with relatively primitive equipment unable to detect invasive alien species, leading to many slipping through. This difficulty also stems from the limited investment in environmental protection, including the control of invasive alien species.

In addition, there are other emerging issues such as limited funding, the professional level of management staff, and equipment for controlling invasive alien species. Regarding cooperation in dealing with invasive alien species, the current coordination mechanism between relevant departments and local governments across the country is still inconsistent, leading to delays in data collection and handling violations.

### ***2.2.3. The Current State of Law on Controlling the Trade of Exotic Species in Vietnam***

Currently, the trade and increasing access to exotic species have resulted in undesirable consequences for the environment. The uncontrolled spread and proliferation of exotic species can cause significant damage to the environment and threaten the existence of native species. The current law on controlling exotic species in Vietnam is still very limited. There are no comprehensive and specific regulations on controlling all exotic species, but only regulations on controlling exotic aquatic species as stipulated in Circular 53/2009/TT-BNNPTNT dated August 2, 2009. Some provisions of the law on the trade of exotic species have many shortcomings, leading to ineffective control activities. The current legal framework is insufficient to prevent the illegal trade of exotic species and does not provide adequate measures to handle violations.

**Firstly**, the regulations on the cultivation of potentially invasive exotic species in protected areas are not yet reasonable and commensurate with the level of biodiversity as prescribed in the regulations on biodiversity conservation in protected areas. However, Article 51 of Decree No. 45/2022/ND-CP on sanctioning administrative violations in the field of environmental protection stipulates:

*"1. A fine of from VND 1,000,000 to VND 3,000,000 shall be imposed for the act of raising, storing, transporting, planting, or cultivating invasive alien species outside protected areas for non-commercial purposes, in cases where the development and spread of these species are controlled and have not caused damage. 2. A fine of from VND 5,000,000 to VND 10,000,000 shall be imposed for the act of raising, storing, transporting, planting, or cultivating invasive alien species outside protected areas for commercial purposes, in cases where the development and spread of these species are controlled and have not caused damage."*

However, Article 52 of the Law on Biodiversity 2008, which stipulates the control of the cultivation of potentially invasive alien species, only stipulates licensing for exotic species that have been tested. According to this regulation, the development of breeding will be permitted if it is licensed by the People's Committee of the province and has been tested. Also related to the testing of exotic organisms as mentioned above, Clause 3 of Article 52 of the Law on Biodiversity also stipulates that "The Ministry of Natural Resources and Environment shall, in coordination with the Ministry of Agriculture and Rural Development, other ministries, and agencies at the same level, prescribe the testing and licensing of the cultivation and development of exotic species." Thus, only one aspect is testing and licensing, which also has many difficulties. If there are no guiding circulars, it will lead to misunderstandings and ambiguity. According to current regulations, the cultivation and development of exotic species in protected areas must also be subject to regulations similar to those for the cultivation and development of exotic species in other protected areas, unless it is based on the need to protect biodiversity, which requires stricter conservation.

**Secondly**, there is a shortage of technical guidelines for conducting experiments and testing invasive alien species before allowing large-scale cultivation; the existing guidelines are mostly general. Specific regulations on the experimental procedures,



duration, and criteria for identifying invasive alien species have not been clearly defined... leading to perfunctory and superficial experimental processes in practice, with inaccurate and unreliable experimental results, creating conflicts and disputes in the process of applying for cultivation permits for alien species.

**Thirdly**, there is a lack of guidelines for identifying risks when importing for the first time; the customs clearance process is not transparent, leading to massive imports for economic benefits. At present, the concept of alien species is not fully understood by the people, leading to the neglect of existing alien species. Alien species did not receive much attention until the early 1990s, when the golden apple snail outbreak spread from the Mekong Delta to the Red River Delta. At the same time, the trend of importing catfish, black velvet rats, and sea urchins into Vietnam was booming; with rumors guaranteeing meat quality and high prices (Khanh Huy, 2021). In contrast, the output for alien species is too narrow, resulting in low growth potential. The Department of Animal Husbandry under the Ministry of Agriculture and Rural Development had to request localities not to raise black velvet rats and strictly control farms. It can be seen that it is only after each alien species is imported into Vietnam and has caused damage that the authorities discover and handle it. Despite the obvious lessons from some alien species, people still invest billions of dong to build farms to cultivate alien species without going through the process of testing and inspection. State management agencies have not been able to control it from the beginning, in other words, there have been "loopholes" in preventing alien species from the management, inspection, and supervision agencies themselves.

**Fourthly**, the control of the growth and development of invasive alien species is also limited. Firstly, there is confusion about handling the trade of invasive alien species due to the lack of legal regulations. Each locality or region has different prices, leading to inconsistent and inaccurate application of prices, resulting in unfair application of the law. For the same act, the inconsistent application of prices leads to the same species, the same endangered or rare animal, being subject to criminal prosecution in one locality but may not be subject to criminal prosecution in another (Court Journal, 2020). Secondly, the delay in handling and confusion in the implementation process of the competent state



management agencies and local authorities; making it extremely difficult to control the spread and development of alien species (Minh Nguyet, 2019).

## **2.2. Potential Solutions to Improve the Current Situation of Exotic Species Trade in Vietnam - Legal Issues in Environmental Protection**

In today's world, environmental protection has become one of society's top priorities. The need to adjust and apply legal regulations to protect the environment has never been greater. In particular, environmental protection for exotic species is increasingly attracting international attention. The enactment and application of legal regulations on exotic species aims to preserve and conserve biodiversity. Therefore, to address legal issues related to environmental protection and the trade of exotic species, this article proposes the following measures:

1. Issuing detailed guidelines for the implementation of import management of exotic species and invasive alien species. This should be based on violations to determine additional penalties and remedial measures in accordance with clauses 8 and 9 of Decree 45/2022/ND-CP on administrative sanctions in the field of environmental protection.

2. Strengthening communication and updating information. Ministries and sectors need to conduct investigations, screening, and build databases on exotic species. They should also enhance information exchange among relevant agencies to handle urgent cases promptly and prevent the entry of exotic species at Vietnamese border gates. Moreover, there should be sufficiently strong sanctions to deal with individuals involved in the business, transportation, and consumption of exotic species, as current regulations make it difficult to prosecute violators criminally.

3. Reviewing and improving legal regulations and technical guidelines on the testing of invasive alien species in accordance with Circular 35/2018/TT-BTNMT dated November 28, 2018, which stipulates criteria for identifying and publishing a list of invasive alien species. Research and amend regulations and sanctions for violations of regulations on the management of invasive alien species to ensure consistency and feasibility in practical implementation.

4. Enhancing the knowledge and practical experience of officials responsible for managing and inspecting the import of exotic species. Focus on strengthening the capacity of state management agencies and quarantine units in controlling exotic species, including monitoring and creating dossiers for imported exotic species. Training should be provided to leaders and specialized management staff at import gates and ports.

5. Synchronizing management activities among competent state agencies and balancing the rights and common interests of the state. There needs to be a consensus between the Ministry of Agriculture and Rural Development and the Ministry of Natural Resources and Environment in management and consistent actions to ensure the strictness of the law.

6. Investigating and compiling a list of invasive alien species. Controlling the import and invasion of exotic species from outside, controlling the cultivation of potentially invasive alien species, and controlling the spread and development of invasive alien species. Publicizing information about invasive alien species and organizing workshops to disseminate information about exotic and invasive alien species to local farmers, guiding them on how to distinguish exotic species from native species and how to deal with invasive species.

7. The Ministry of Natural Resources and Environment proposes to the Prime Minister to issue a Directive on strengthening the management and control of invasive alien species and directs the implementation of measures to handle violations in the management and control of exotic species. There should be a consensus on how to handle violations, clearly defining violations to ensure consistency in management and control of the spread and development of exotic species.

Compliance with legal regulations on environmental protection is essential to ensure that the trade of exotic species does not negatively impact the environment and biodiversity. This is an important part of environmental management and protecting the existence of local species.

### 3. CONCLUSION

For a long time, legal issues related to environmental protection in the trade of exotic species have become a hot topic and require special attention from both government agencies and the community. According to Decree No. 06/2019/ND-CP on the management of exotic species and detailed regulations on some articles of the Environmental Protection Law, the activities of buying, selling, transporting, breeding, owning, and using exotic species must strictly comply with the law. Additionally, there must be preventive measures, treatment, and strict monitoring to ensure that the exotic trade does not cause harmful consequences to the environment, ecosystems, and human health.

However, in reality, legal issues still have many limitations and do not ensure high efficiency in preventing and handling violations related to the trade in exotic species. One of the main reasons is the shortcomings in the legal framework as well as in the implementation of the law. Many environmental violations related to exotic species still occur frequently without being seriously handled by the authorities.

To overcome this situation, we need to have more specific, transparent, and stronger legal mechanisms to ensure that the trade in exotic species will not affect the balance and sustainability of the environment. At the same time, there needs to be an improvement in monitoring and handling violations, ensuring that violators will be held accountable before the law and be subject to severe punishment. In addition, increasing information, propaganda, and education for the community about the negative impacts of the exotic trade also plays an important role in preventing the trade in exotic species. Only with awareness and support from the community can we achieve high efficiency in protecting the environment and ecosystems.

Overall, legal issues regarding environmental protection for the trade in exotic species are an urgent issue and require special attention from government agencies, businesses, and the community. We need to work together to find solutions so that business activities can develop sustainably while ensuring that the environment and ecosystems are not negatively affected.

## REFERENCES LIST

1. Bui Cong Hien (2019) provides a basic understanding of alien species. This research was published by the College of Natural Sciences at Vietnam National University, Hanoi, and appeared in the Vietnam Science & Technology Journal, Issue 9 of 2019.
2. Bui Ngoc Thanh (2013) conducted research on the impact of invasive alien species in Phong Nha-Ke Bang National Park and suggested preventive measures.
3. Court magazine (2020), "Some Shortcomings in the Trial of Crimes Violating Regulations on the Protection of Endangered and Rare Animals and Proposals, Suggestions, <https://tapchitoaan.vn/toi-vi-pham-quy-dinh-ve-bao-ve-dong-vat-nguy-cap-quy-hiem-theo-quy-dinh-tai-dieu-244-bo-luat-hinh-su-nam-2015>
4. Environmental Journal: Invasive species in our country today
5. Environmental Law Textbook, Hanoi Law University
6. Khanh Huy (2021, April 11), Management and control of invasive alien species, Nhan Dan Newspaper, pages 1,2.
7. Luyen Dinh (2017), The haunting of invasive species: Why are there shortcomings from awareness to management? Phap Luat Newspaper, <http://baophapluat.vn/hang-that-hang-gia/sinh-vat-ngoai-lai-am-anh-vi-sao-bat-cap-tu-nhan-thuc-den-quan-ly-321861.html>
8. Minh Nguyet (2019), "Management of Invasive Alien Species: Part 2 - Strengthening Control and Raising Awareness," <https://baotintuc.vn/xa-hoi/quan-ly-sinh-vat-ngoai-lai-xam-hai-bai-2tang-cuong-kiem-soat-va-nang-cao-nhan-thuc-20190720091732269.htm>
9. Nguyen Thu Hoai (2022), "The Environment and the Application of Law on Controlling Alien Species in Vietnam
10. Thanh Cong (2023), "Part 1: Invasive Species Are Threatening the Globe, <https://petrotimes.vn/bai-1-cac-loai-ngoai-lai-dang-de-doa-toan-cau-693444.html>
11. The People's Representative E-newspaper, Managing Invasive Alien Species - From Policy to Responsibility, <https://daibieunhandan.vn/moi-truong/Quan-ly-sinh-vat-ngoai-lai-xam-hai--tu-chinh-sach-toi-trach-nhiem-i186636/>
12. VOV Economy Portal: Despite the ban on trade, invasive alien species are still being widely sold online, <https://vov.vn/kinh-te/bi-cam-kinh-doanh-sinh-vat-ngoai-lai-van-duoc-rao-ban-day-cho-mang-post1018894.vov?page=93>

13. VOV Economy Portal: Invasive species cause \$423 billion USD in annual global economic losses, <https://vov.vn/kinh-te/cac-loai-xam-lan-gay-thiet-hai-cho-kinh-te-toan-cau-423-ty-usdnam-post1043736.vov>