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Environmental Mediation in Vietnam: A Lesson from Japan Legal Approaches

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ABSTRACT

Alternative dispute resolution (ADR) has emerged as a prominent method for resolving disputes outside the traditional court system. The ADR methods generally include negotiation, mediation, arbitration, and sometimes also conciliation. In recent years, ADR has gained significant recognition as an effective approach for resolving environmental disputes on a global scale. However, the legal frameworks governing ADR vary across countries due to contextual differences and diverse mechanisms. This article aims to undertake a comparative examination of the legal regulations governing Vietnamese out-of-court mediation and their Japanese counterparts, with a specific focus on environmental disputes. Drawing insights from Japan's successful achievements in environmental mediation, the authors propose prominent solutions customized to Vietnam's unique legal system. This paper provides a more comprehensive understanding of legal approaches to environmental mediation, thereby set forth practical recommendations for enhancing Vietnam's ADR framework, exclusively environmental dispute.

Keywords: *Alternative dispute resolution (ADR), environmental disputes, Vietnam, Japan, mediation.*

I. INTRODUCTION

In recent years, there has been a growing recognition among many countries of the limitations associated with resolving environmental disputes through civil litigation process in court. As a result, there has been a shift in focus towards the development of ADR systems, with mediation emerging as a popular method. “Act to Promote Mediation and other Extra-Judicial Conflict Resolution Processes” of 21 July 2012 of Germany, Article 1, Section 1 has referred to mediation as: “*First and foremost, mediation is a non-public and tightly organized process based on the voluntary and self-determined spirit that the parties seek to resolve their disputes through a friendly solution with the support of one or more mediators*”³.

Environmental mediation has always been used by many countries worldwide. However, the

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³ Mediation Act of 21 July 2012 (Federal Law Gazette I, p. 1577) of the Federal Republic of Germany. Access at: https://www.gesetze-im-internet.de/englisch_mediationsg/englisch_mediationsg.html.

related mechanism, procedure, and competent authority to carry out may vary significantly between countries. In China, for instance, mediation can be categorized into different types based on the role of the mediator involved: 1) *People's mediation*, wherein mediators, typically members of the People's Mediation Committees, operate under the regulations established by the Ministry of Justice; 2) *Administrative mediation*, whereby the administrative bodies, functioning as the local executive branch, mediates disputes between parties; and 3) *Judicial mediation*, wherein mediation procedures occur within the court system, guided by the provisions outlined in the Chinese Civil Procedure Code⁴.

The United States, on the other hand, has established the Conflict Prevention and Resolution Center (CPRC), an agency under the auspices of the United States Environmental Protection Agency (EPA), dedicated to ADR, with a specific focus on mediation. CPRC's mediation mechanism has garnered significant acclaim for its remarkable effectiveness in resolving complex environmental disputes. Researches conducted by CPRC indicate that environmental mediation cases overseen by the organization “*have resulted in a one-third reduction in time compared to court resolution, a 30% decrease in the allocation of human resources, and a staggering 79% decrease in total work time for dispute resolution support staff*”, as compared to pursuing the dispute through legal channels⁵.

In Japan, the Act on the Settlement of Environmental Pollution Disputes (Act No. 108 of 1970) assigning jurisdiction for environmental dispute resolution by mediation to two quasi-judicial administrative agencies: *the Environmental Dispute Coordination Commission* (“**the EDCC**”) and *the Prefectural Pollution Review Boards* (“**the PPRB**”).

In Vietnam, the resolution of major environmental disputes often involves mediation by local government authorities. However, the legal framework governing the environmental mediation system in Vietnam is currently facing several challenges, resulting in low efficiency in resolving disputes. In contrast, many countries, particularly Japan as aforementioned, have achieved notable success in using mediation to resolve environmental disputes. Japan has established a robust and practical legal system pertaining to environmental mediation, which has proven highly effective and has significantly reduced reliance on court intervention for resolving environmental disputes.

⁴ Jianwei, Z. and Xiaobo, Z. ‘Chapter 16: Environmental Dispute Settlement in China’ in: Research Handbook of Chinese Environmental Law, (Cheltenham Elgar 2015) <<https://doi.org/10.4337/9780857931429>>, 364.

⁵ ‘Learn About Environmental Collaboration and Conflict Resolution’, United States Environmental Protection Agency, 2022. <https://www.epa.gov/eccr/learn-about-environmental-collaboration-and-conflict-resolution#measuringimpact>

II. JAPANESE LAW ON THE MEDIATION OF ENVIRONMENTAL DISPUTES

Firstly, regarding the competent authority to conduct mediation:

In Japan, the EDCC and the PPRB will have jurisdiction to resolve environmental disputes through mediation. Additionally, in some special cases prescribed by law, an *Inter-Prefectural Pollution Review Board* (“**the Inter-PPRB**”) will be established to resolve specific environmental disputes.

The jurisdiction of these agencies to resolve environmental disputes is detailed in the 1970 Act on the Settlement of Environmental Pollution Disputes (“**the 1970 Act**”) and Government’s Guiding Decrees, specifically as follows:

The EDCC	The PPRB	The Inter-PPRB
<p>Has jurisdiction to mediate and resolve the following environmental disputes:</p> <p><i>(i) Large-scale or serious cases:(Article 24.1(1)):</i> Disputes concerning environmental pollution that result in substantial harm to human health and the surrounding ecosystem, or situations where a significant number of individuals are currently being harmed, or there is a potential risk of an increasing number of people being harmed in the future. The responsibility lies with the Government to determine which disputes fall under the category of “<i>Large-scale or serious cases</i>.”</p> <p><i>(ii) Wide-area-concerned cases (Article 24.1(2)):</i> Noise problems caused by aircraft or Shinkansen</p>	<p>Has jurisdiction to mediate and resolve any environmental dispute not within the jurisdiction of the EDCC.</p>	<p>In cases of environmental disputes involving several prefectures, the plaintiff’s Mediation Request must be submitted via the Governor of one of the pertinent prefectures.</p> <p>Upon receiving the Mediation Request, the Governor is required to promptly initiate communication with the Governors of the involved prefectures to engage in collaborative discussions regarding the establishment of an Inter- PPRB. If consensus is reached among the concerned Governors, the Inter- PPRB will assume jurisdiction</p>

<p>bullet trains.</p> <p>(iii) Cases involving several prefectures (Article 24.1(3)): Cases wherein damage covers multiple prefectures. However, the EDCC will only have jurisdiction to resolve these cases if an Inter-PPRB is not established.</p> <p>(iv) Disputes authorized by the PPRB and Inter-PPRB (Article 38): In specific circumstances and with the consent of the involved parties, the PPRB and Inter-PPRB shall transfer mediation jurisdiction cases to the EDCC for resolution.</p>		<p>over the mediation of these disputes. Consequently, the EDCC will no longer have the authority to mediate the aforementioned dispute.</p>
<p>When the EDCC or PPRB receives a Mediation Request that falls outside their jurisdiction, they are obligated to transfer the dispute to the appropriate competent authority for resolution. Simultaneously, the applicant must be promptly notified of this transfer (<i>Article 25</i>).</p>		

Secondly, regarding the procedure and cost of conducting mediation:

Except in cases where prefectural authorities have specific regulations on mediation procedures, the general procedures are outlined as follows:

STEP 1: When there is a need to resolve an environmental dispute through mediation, either party or both may submit a Mediation Request to the competent authority for dispute resolution, as specified above (*Article 26*). However, in the case the request is directed to the PPRB of a Prefectural, it must also be simultaneously sent to the Prefectural Governor.

If an individual or organization realizes that they are also suffering damage due to the same cause as the ongoing dispute, they may participate in the dispute resolution procedure as a party, as stated in *Article 23.4*.

STEP 2: The competent authority shall refuse accepting the plaintiff's Mediation Request, if it deems the nature of the dispute unsuitable for mediation or if the plaintiff

lacks a valid reason for requesting mediation. Upon receiving a Mediation Request, the competent authority must, as soon as practicable, provide written notification to the defendant.

STEP 3: The competent authority, in accordance with the law, shall appoint a minimum of three members (referred to as "*mediators*") to form a Mediation Council for resolving disputes through mediation.

If an Inter - PPRB has jurisdiction over the mediation process, the Mediation Council will be comprised of all members from the relevant Prefectures' PPRBs.

STEP 4: If the Mediation Request is accepted, the Mediation Council shall resolve the environmental dispute between the parties. During the mediation process, the powers of the Mediation Council include, but are not limited to, the following rights:

Right to request appearance: All parties are required to attend and present their opinions and arguments regarding the dispute.

Right to autonomous evidence investigation and expert appraisal: The Mediation Council has the authority to request the parties to submit relevant documents, papers, and evidence related to the dispute. Additionally, when necessary to ascertain the cause of the dispute, the Mediation Council shall, directly or through a team of experts, inspect and appraise documents, papers, and evidence at relevant factories, plants, business locations, etc.

Right to apply temporary emergency measures: The Mediation Council can issue warnings, compel parties to refrain from actions that significantly obstruct the mediation process and future implementation of mediation agreements.

Mediation sessions and decision-making sessions of the Mediation Council are conducted in a non-public manner. During mediation sessions, the Mediation Council can enforce order by removing individuals who disrupt the progress of the sessions or cause disorder from the meeting place.

STEP 5A: After conducting investigations and having received expert appraisals, the dispute is considered successfully resolved if the parties voluntarily agree with the solutions proposed by the Mediation Council.

If the Mediation Council finds it challenging to reach an agreement between the parties and deems it appropriate based on the circumstances of the case, the Mediation Council

shall draft a mediation agreement itself and recommend that the parties accept the proposed agreement (referred to as “**Mediation Recommendation**”).

The contents of the Mediation Recommendation must receive approval from a majority of the mediators in the Mediation Council before being sent to the parties involved.

Within 30 days from the time the Mediation Recommendation is sent to the parties, if the parties either accept the recommendation or do not respond to the request for acceptance, the Mediation Recommendation is deemed accepted by the parties. Consequently, the Mediation Recommendation becomes a mediation agreement between the parties (*Article 34*).

STEP 5B: If the Mediation Council determines that the case cannot be successfully resolved through mediation, or if the parties reject the Mediation Recommendation, the mediation process is considered a failure.

In such cases, the competent authority for dispute resolution must promptly notify the parties in writing.

When environmental dispute resolution through mediation fails, the parties have the right to explore alternative dispute resolution methods, including initiating a lawsuit in court.

Meanwhile, regarding dispute resolution costs, conducting mediation under the 1970 Act is also considered a significantly more cost-effective solution than court dispute resolution procedures. The mediation fee will be paid directly by the plaintiff to the competent authority for dispute resolution. In case where disputes are resolved at the PPRB; then the mediation fee will be determined by that locality. If resolving disputes happens at the EDCC, the fee is only 1000 JPY for disputes valued under 1 million JPY. The fee is then gradually increased, corresponding to the value of the requested dispute resolution⁶. However, with the same method of resolution (mediation) and the value of dispute (under 1 million JPY), if mediation procedures are carried out in court for disputes valued under 1 million JPY, then the mediation fee that the plaintiff must pay is up to 5000 JPY. If a lawsuit is filed in court, the court fee is up to 10,000 JPY.

⁶ Specifically: For disputes with a value of less than 1 million JPY: the fee is 1000 JPY.

For disputes with a value of over 1 million JPY to less than 10 million JPY: the fee increases by 7 JPY for each part of 10000 JPY. For disputes with a value of over 10 million JPY to less than 100 million JPY: the fee increases by 6 JPY for each part of 10000 JPY.

For disputes with a value of over 100 million JPY: the conciliation fee increases by 5 JPY for each part of 10000 JPY. Reference: Official Website of the Central Environmental Dispute Coordination Committee: <https://www.soumu.go.jp/kouchoi/complaint/tetsuzuki/fee/main.html> (in Japanese).

III. VIETNAMESE LAW ON THE MEDIATION OF ENVIRONMENTAL DISPUTES

Vietnam's environmental legal system emerged relatively later compared to Japan. The acknowledgement of the responsibility to safeguard the environment was first introduced in Article 36 of the 1980 Constitution of Vietnam (“*The nation, enterprises, cooperatives, people's armed forces units and citizens all have the obligation to implement policies to protect, renovate and regenerate natural resources, and protect and improve habitat*”). However, it was not until 1993 that Vietnam established its environmental legal framework with the promulgation of the Law on Environmental Protection. Subsequently, the laws on environmental protection underwent several revisions in 2005, 2014, and most recently in 2020. The 2020 Law on Environmental Protection holds particular significance as the primary legislation governing environmental matters in Vietnam. It came into effect on January 1, 2022, signifying a significant milestone in Vietnam's environmental legal framework.

Article 133 of 2020 Law on Environmental Protection⁷ prescribes negotiation as the primary method for resolving environmental disputes related to claims for compensation for environmental damages. However, if negotiation fails to yield satisfactory results for both parties, they may opt for alternative forms of resolution, including mediation, arbitration, or court proceedings. Mediation is thus identified as a secondary option when negotiation proves unsuccessful. The regulations concerning out-of-court mediation encompass the following aspects:

Firstly, regarding mediation jurisdiction:

Similar to Japan, the authority to resolve environmental disputes through mediation in Vietnam has been vested in the executive branch. However, unlike Japan's establishment of specialized administrative agencies such as the EDCC and PPRB, Vietnamese law has granted this jurisdiction exclusively to the general executive branch of a local government, the People's Committees, at some levels.

In both the 2005 (*Article 122.3*) and 2014 (*Article 143.3*) versions of Law on Environmental Protection, it was stipulated that the commune-level People's Committees possessed the jurisdiction to mediate environmental disputes that arose within their respective areas.

⁷ 2020 Law on Environmental Protection of Vietnam: Article 133. Settlement of claims for compensation for environmental damage 1. A claim for compensation for environmental damage shall be settled by negotiation between parties. In case of failure to reach an agreement, the parties may adopt the following methods:

a) Mediation;, b) Arbitration;, c) Settlement of the dispute by a Court.

2. The settlement by a Court may be carried out in accordance with regulations on tort and law on civil procedures, except for regulations on proving the causal connection between violations against the law and the damage caused. English translation by: <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Luat-so-72-2020-QH14-Bao-ve-moi-truong-2020-431147.aspx>

However, this provision has been abolished in the 2020 Law on Environmental Protection.

Article 131.3 of the 2020 Environmental Protection Law delineates the designated agencies responsible for compensation claims, namely the People's Committees at the commune, district, and provincial levels, as well as the Ministry of Natural Resources and Environment. These bodies are expressly endowed with the right to “*act on behalf of organizations and individuals who have sustained harm to their human life, health, property, and legitimate interests due to environmental degradation*” in pursuit of just compensation. Nevertheless, it is crucial to emphasize that these agencies are entrusted with the responsibility of representing the aggrieved parties in their pursuit of compensation, rather than being vested with the authority to mediate disputes between the parties. Thus, the 2020 Environmental Protection Law lacks specific provisions delineating the precise agencies vested with the authority to engage in mediation for environmental disputes, as it rescinds the previous stipulation assigning such responsibility to the commune-level People's Committees (under the 2005 and 2014 Environmental Protection Law). Despite the inclusion of Article 135 in the 2020 Environmental Protection Law, which alludes in passing to the notion of an “agency for resolving environmental damage compensation”, the law falls short of providing explicit identification of these agencies.

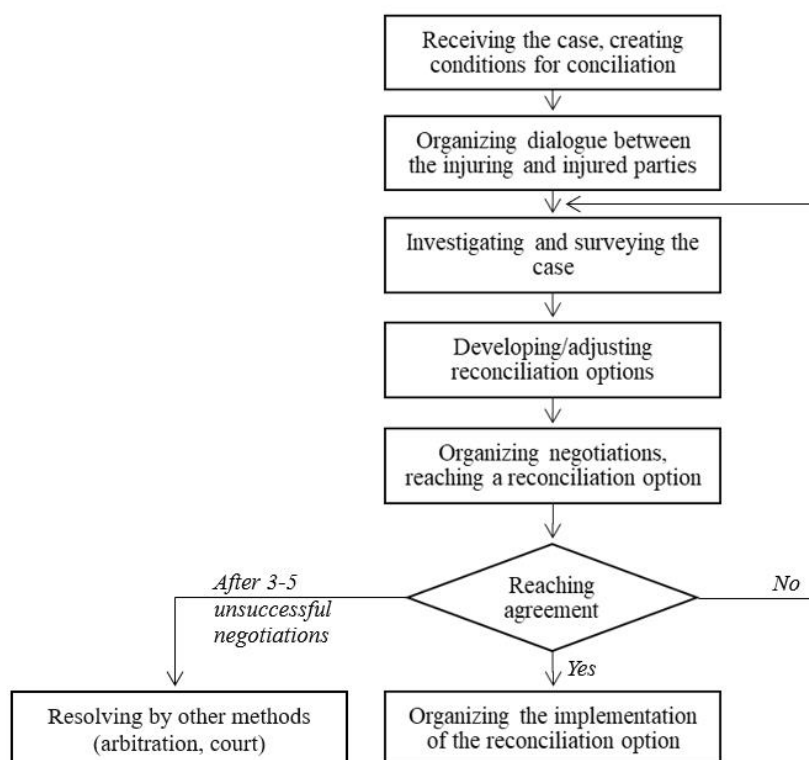
Furthermore, specific legislation in the field of environmental disputes contains distinct provisions pertaining to this matter. For instance, Article 76 of the 2012 Water Resources Law stipulates that in disputes related to water resources, “*the state encourages the parties to engage in mediation with each other.*” Additionally, the authority to “*facilitate mediation for water resource disputes within their respective localities upon the request of the disputing parties*” is still conferred upon the commune-level People's Committees. As a result, discrepancies arise in the jurisdictional provisions governing mediation in environmental disputes between general laws, such as the Environmental Protection Law, and specialized laws, such as those governing water resource disputes within the Water Resources Law. While the principle of “*generalia specialibus non derogant*” (specialized laws prevail over general laws) shall be applicable in resolving the conflict between these laws, the lack of uniformity in the application of the law remains inevitable.

Secondly, regarding the procedures for mediation:

The current Vietnamese legal framework lacks explicit provisions regarding the procedures for conducting environmental mediation. However, in September 2015, the Institute of Strategy and Policy on Natural Resources and Environment of Vietnam, in collaboration with The Asia Foundation, drafted and published the “*Guidelines for resolving environmental disputes*”

through mediation.” The Guidelines provided a relatively detailed outline of the order and procedures for conducting mediation in environmental disputes, based on the primary legal basis of the 2014 Environmental Protection Law. Although these guidelines were not legally binding, they served as a reference standard for Da Nang City in 2017 when resolving an environmental dispute in Ho Rai (Phuoc Thuan hamlet, Hoa Nhon commune, Hoa Vang district, Da Nang City)⁸. It is important to note that these guidelines were limited in scope and only applied to resolving environmental disputes between the businesses responsible for pollution and environmental degradation and the innocent civilians that bear the consequences. They did not cover minor environmental complaints between households or larger environmental disputes and conflicts involving multiple sectors, localities, or countries⁹. Nevertheless, the guidelines remain the most detailed source of procedural guidance for conducting mediation in environmental disputes and their contents are consistent with the reality in Vietnam.

The guidelines for resolving environmental disputes through mediation provide a structured process consisting of six steps, which are summarized in the diagram below¹⁰:



⁸ Duong Thi Phuong Anh and others, ‘Resolving Environmental Disputes through Mediation: Pilot Application in Da Nang’ (2017), Environment Journal of Vietnam <<http://tapchimoitruong.vn/gi/dien-dan-trao-doi-21/gi/e1%ba%a3i-quy%e1%ba%bft-tranh-ch%e1%ba%a5p-m%3%b4i-tr%e6%b0%e1%bb%9dng-th%e3%b4ng-qua-h%e3%b2a-gi%e1%ba%a3i-%e3%81p-d%e1%bb%a5ng-th%e1%bb%ad-nghi%e1%bb%87m-%e1%bb%9f-%e3%90%e3%a0-n%e1%ba%b5ng-14927>>

⁹ Institute of Strategy, Resource and Environmental Policy, The Asia Foundation, “Guide to Resolving Environmental Disputes through Mediation”(2015), 18

¹⁰ *ibid.*

Specifically as follows

<p>STEP 1</p>	<p>Receipt of the Dispute Resolution Request and Preparation for environmental mediation:</p> <p>The competent authority (the commune-level People's Committee as stipulated by the 2014 Environmental Protection Law) undertakes the task of receiving complaints from citizens or communities. The procedure entails the following actions:</p> <p>The classification criteria are determined as follows:</p> <ul style="list-style-type: none"> (i) if it is a small-scale dispute (between households, between people and small businesses, etc.) then conduct grassroots reconciliation according to the Law on Grassroots Conciliation 2013 and jurisdiction belongs to the commune-level People's Committee. (ii) if it is a large-scale dispute (caused by a factory, adversely affecting the health and life of a commune area, etc) then the commune-level People's Committee must report to the district-level and provincial-level People's Committees. <p>The district-level and provincial-level People's Committees, upon receiving reports from the commune-level People's Committee, must determine the disputing parties, the claims, the level of tension of the dispute, the wishes of the relevant parties, etc, and consider the possibility of applying mediation measures.</p> <p>If mediation can be carried out, the competent People's Committee will immediately establish the Mediation Team. The Mediation Team prepares the Mediation Plan.</p> <p>Members of the Mediation Team must be knowledgeable about environmental policies and laws; priority is given to those with experience in mediating environmental disputes.</p>
<p>STEP 2</p>	<p>Organizing dialogue between parties:</p> <p>Upon finalizing and obtaining approval for the Mediation Plan, the</p>

	<p>members of the Mediation Team initiate communication with the disputing parties, coordinating and overseeing the scheduling and preparation of a dialogue session.</p> <p>During the meeting, the Mediation Team shall explain to the parties its legal roles and responsibilities and presents an overview of the Mediation Plan for their consideration.</p> <p>Essential objectives of this pivotal encounter encompass acquiring explicit acknowledgment of the legal role of the involved parties and the Mediation Team, garnering their voluntary commitment to engage in a collaborative manner, and securing their assent to the proposed Mediation Plan.</p>
STEP 3	<p>Investigating and surveying the case:</p> <p>The Mediation Team needs to determine (i) the causes of pollution and environmental degradation; (ii) identify the relevant parties; (iii) determine the damage caused by pollution and environmental degradation (including type of damage, level of damage).</p>
STEP 4	<p>Preparing for the mediation agreement:</p> <p>The Mediation Team must re-identify the main interests/concerns of the parties; on that basis, organize the construction of solutions to resolve environmental disputes, select the optimal dispute resolution option.</p>
STEP 5	<p>Organizing negotiations, reaching a mediation agreement:</p> <p>The most important goal of this step is to achieve consensus and agreement among the disputing parties on the solution that has been developed. This consensus and agreement must be expressed by an agreement record that clearly states the responsibilities of the parties to be performed to resolve the dispute.</p>
STEP 6	<p>Organizing the implementation of the mediation agreement:</p> <p>The Mediation Team must cooperate with local associations and organizations to monitor both parties in fulfilling their agreed obligations according to the proposed plan. In the long term,</p>

	monitoring compliance with legal regulations on environmental protection is also the responsibility of relevant competent agencies.
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IV. CERTAIN EVALUATIONS REGARDING THE MEDIATION OF ENVIRONMENTAL DISPUTES IN VIETNAM AND JAPAN

Mediation, as a means of resolving environmental disputes, is subject to formal legal regulations in both Vietnam and Japan. Nevertheless, these two countries exhibit significant distinctions in terms of their regulatory frameworks and enforcement practices.

- (i) *In Japan, a consolidated system of specialized administrative agencies governs the mediation of environmental disputes, ensuring a distinct separation of jurisdictional authority. In contrast, Vietnam has not yet established a comparable specialized agency system.*

Since 1970, Japan has successfully established two quasi-judicial administrative agencies, namely *the Environmental Dispute Coordination Commission (“EDCC”)* and *the Prefectural Pollution Review Boards (“PPRBs”)*. These agencies possess specialized jurisdiction to effectively address environmental disputes through ADR methods, including mediation. Notably, the jurisdictional boundaries between the EDCC and the PPRBs are well-defined, ensuring that each agency possesses the authority to resolve specific types of environmental disputes without any overlap. This distinctive system ensures that all environmental disputes are handled by a single agency. The relationship between EDCC in the central-level and the PPRBs in the local-level, therefore, is characterized by coordination and cooperation, rather than a hierarchical “top-down” relationship. This approach fosters an environment of collaboration and allows for efficient resolution procedures. The specialized administrative agency model in Japan facilitates accessible resolution processes for all parties involved in society. Moreover, these agencies are able to dedicate their efforts to enhancing their professional expertise in environmental matters. As a result, they can offer highly specialized and practical resolution options that are widely preferred by the disputing parties.

In contrast, Vietnam has not yet established a comparable agency specifically invested in addressing environmental disputes. According to Article 143.3 of the 2014 Environmental Protection Law, the jurisdiction to mediate environmental disputes is granted to the commune-level People's Committee. However, this provision fails to account for cases involving environmental disputes spanning multiple administrative units at the commune, district, or

provincial levels. The 2020 Environmental Protection Law subsequently removes the mediation jurisdiction of the commune-level People's Committees, yet it does not assign jurisdiction to resolve environmental disputes outside of the court to specialized state agencies or a designated agency, akin to the Japanese system.

Vietnam's existing environmental law primarily follows an administrative framework, which consequently affects the practice of mediation. In contrast to Japan, Vietnam lacks a consolidated system with jurisdiction to address all types of environmental disputes, regardless of their scale. The mechanism for resolving such disputes varies considerably, primarily contingent upon the categorization of disputes as either "large" or "small," based on the discretion of government entities, without clear legal criteria. This approach can introduce ambiguity and inconsistency into the resolution process. Furthermore, the impartiality and fairness of the dispute resolution council in Vietnam may face challenges, particularly when representatives from state agencies are involved in the council and also, act as plaintiffs. This potential conflict of interest can undermine the neutrality and equitable handling of environmental disputes within the system. Currently, most environmental disputes in Vietnam, if not resolved in court, are initiated by complaints from citizens and then received and handled by local administrative bodies. For disputes between households or with small private enterprises, the dispute resolution mechanism applied is conciliation at the grassroots level as prescribed by law. Meanwhile, for large environmental disputes, the resolution of environmental disputes is still mainly carried out in the direction of the state bodies conducting investigations and organizing dispute resolution meetings; then the state bodies themselves represent the affected community in requesting the subject causing damage to compensate for damages. If the subject causing damage does not cooperate in conducting negotiations or mediation, the state shall impose administrative orders or even initiates criminal prosecution if a crime is constituted.

(ii) In contrast to Japan, the jurisdiction and procedures pertaining to environmental mediation in Vietnam lack elaboration within the legal system.

Despite the abolition of the provision granting jurisdiction to commune-level People's Committees in the 2020 Environmental Protection Law, no alternative provision has been made to address this matter adequately. Moreover, Vietnam employs various mediation mechanisms outlined in its legal framework. These include court mediation procedures, grassroots conciliation procedures for small-scale disputes (according to the 2013 Grassroots Conciliation Law; can be applied to small-scale environmental disputes in *hamlets, villages, residential*

groups, neighborhoods¹¹), and commercial mediation procedures for commerce-related environmental disputes (according to Decree 22/2017/ND-CP; can be applied to environmental disputes related to commerce). However, each of these mechanisms possesses distinct regulatory objectives and procedures and is not specifically designed to address environmental disputes. Consequently, Vietnam lacks a unified, rigorous, and specifically tailor-made process for environmental mediation.

In contrast, Japan has detailed and clear regulations regarding all these aspects in the 1970 Act on the Settlement of Environmental Pollution Disputes and its implementing guidelines. The EDCC and PPBR are competent authorities for mediating specific environmental disputes, and they have strict and clear procedures. Specific regulations in Japan, such as granting proactive evidence investigation authority to the Mediation Council and public budget coverage for dispute resolution fees, have fostered high trust in mediation among the public. Mediation constitutes a significant advantage, accounting for more than 97% of total resolved disputes, compared to other ADR methods outside the court in Japan¹².

V. CONCLUSION

As previously examined, the alternative dispute resolution (ADR) mediation system employed in Vietnam to address environmental disputes encounters several deficiencies and constraints in terms of legal regulations and enforcement practices. This issue warrants attention, particularly as the current situation illustrates that *"The vast majority of environmental disputes in recent times in Vietnam have been resolved via negotiation and mediation with the engagement of different authorities at different levels [...] at different levels"*¹³. Leveraging insights from Japan's experience, a nation characterized by a relatively unified and efficient system for the resolution of environmental disputes, our research group puts forth several recommendations to enhance the Vietnamese legal framework.

(i) Establishing a specialized administrative system to resolve environmental disputes through mediation outside the court in Vietnam.

Based on the Japanese model and taking into account Vietnam's capacity to resolve environmental disputes, our proposed organizational model for this system is as follows:

At the central level: Establish the *"Central Environmental Dispute Resolution Committee"* (or another appropriate name) under the Ministry of Natural Resources and Environment. This

¹¹ Article 2.2 of the 2013 Grassroots Conciliation Law of Vietnam.

¹² Environmental Dispute Coordination Commission of Japan, *"White Paper on Environmental Dispute Resolution"* (2021) <https://www.soumu.go.jp/kouchou/knowledge/nenji/R3nend_menu.html> , 14 and 23.

¹³ Hanoi Law University, *"Environmental Law Textbook"*, (People's Public Security Publishing House 2018), 427.

proposal aligns with prevailing scientific opinions in Vietnam regarding the matter ¹⁴.

The Central Environmental Dispute Resolution Committee would primarily focus on facilitating the mediation-based resolution of civil disputes pertaining to the environment. In addition, the Committee would provide regular reports to the competent authorities, particularly the supervisory agency, i.e., the Ministry of Natural Resources and Environment, regarding its annual activities in environmental dispute resolution. Collaborative efforts with other relevant state agencies and research institutes would also be pursued to propose environmental policies and laws, specifically those aimed at enhancing the effectiveness of environmental mediation. Furthermore, it is crucial that the Committee maintains complete independence and remains free from any influence by administrative or judicial entities. Engaging in public administration activities should be avoided, as those responsibilities would fall within the purview of other departments within the Ministry of Natural Resources and Environment.

It is recommended that the Central Environmental Dispute Resolution Committee in Vietnam be vested with the power to collect mediation fees for facilitating dispute resolution. As a result, the Committee would be recognized as a legal entity and permitted to maintain an account at the Vietnamese State Treasury. In addition to the primary source of revenue derived from mediation fees, as a state administrative agency, the Committee's operational budget would also be ensured through allocations from the state budget.

To align with the ongoing efforts to optimize workforce management by the policies of the Communist Party of Vietnam, we propose a framework for determining the number of members and their appointment within the Committee, to be delegated by the Minister of Natural Resources and Environment. However, a portion of the Committee's members should consist of independent experts from external entities, engaged on a part-time basis through fixed-term contracts. The Chairman and Vice-Chairmen would assume full-time positions. Regardless of their full-time or part-time status, a prerequisite for Committee membership would be possessing profound expertise in fields related to the environment and environmental dispute

¹⁴ A similar proposal has been made in

(1) Tran Viet Dung and others, 'Model of Resolving Environmental Disputes through Mediation in Some Countries - Lessons for Vietnam' (2017), Vietnam Legal Science Journal, No. 09 (112), 40-48.

(2) Nguyen Trung Thang and others, 'Research and Proposal of Mechanism for Resolving Environmental Disputes Outside the Court in Vietnam' (2015), Environment Journal of Vietnam, June.

<<https://sponre.gov.vn/vi/News/Doi-Thoai/Nghien-Cu-Xut-c-Ch-Gii-Quy-T-Tranh-Chp-Moi-Trng-Ngoai-Toa-an-Vit-Nam-1235.html>>;

(3) Dao Duc Hanh and others, 'Resolving Environmental Disputes through Mediation: Application of Law and Recommendations for Improvement' (2021), Vietnamese Lawyer Journal,

<<https://lsvn.vn/Giai-Quy-T-Tranh-Chap-Moi-Truong-Bang-Phuong-Thuc-Hoa-Giai-Thuc-Trang-Ap-Dung-Phap-Luat-va-Kien-Nghi-Hoan-Thien1632471722.html>>.

resolution, such as environmental law, academic lecturing, research institutes, and environmental advocacy. Moreover, the Committee could establish an Expert Council for specific cases when necessary, comprising representatives from ministries, sectors, scientists, and relevant political and social organizations, mirroring the Japanese model. Concerning the disputes falling under the jurisdiction of the Committee, its responsibilities would encompass mediating "serious cases," disputes spanning two or more provinces, as well as disputes transferred from the Provincial Environmental Dispute Resolution Board for resolution.

At the local level: it is recommended that the government initiate a pilot program for establishing an Environmental Dispute Resolution Board at the provincial level in selected areas. This provincial-level board would be entrusted with the authority to receive and resolve environmental disputes through mediation within its respective province. Delegating the authority to resolve environmental disputes to lower-level authorities (district and commune levels) is not necessary at present due to their limited capacity, expertise, and resources for conducting effective mediation.

Pilot the establishment of the Environmental Dispute Resolution Board in specific provinces stems from the fact that environmental disputes in Vietnam are currently unevenly distributed among localities. While regions with industrial zones and developed economies, such as Dong Nai, Binh Duong, Ho Chi Minh City, Hanoi, Da Nang, and Nghe An, experience numerous environmental disputes, purely agricultural areas encounter fewer cases. Thus, the initial stage involves piloting the establishment of a permanent Environmental Dispute Resolution Board under the supervision of the Provincial People's Committee (in coordination with the Department of Natural Resources and Environment) in select localities with complex environmental disputes. Meanwhile, other provinces can consider adopting a model of a non-permanent dispute resolution board based on specific cases or directly transferring the dispute to the Central Environmental Dispute Resolution Committee if the local jurisdiction lacks the necessary resources to resolve it.

In terms of the financial regime and organizational structure of personnel, the provincial Environmental Dispute Resolution Board should adhere to a framework similar to that of the Central Environmental Dispute Resolution Committee. Members of the provincial board should possess extensive expertise in environmental matters and dispute resolution and be appointed by the Chairman of the Provincial People's Committee.

Regarding the disputes falling under its jurisdiction, the provincial Environmental Dispute Resolution Board would have the authority to resolve all civil disputes related to the

environment that do not fall within the purview of the Central Environmental Dispute Resolution Committee. Furthermore, if it is determined that there is insufficient capacity and resources to resolve a particular dispute, the provincial board may transfer the case for mediation at the central level.

However, since mediation is the act of the competent authority proposing a solution and the parties voluntarily accepting that solution, so the mediation agreement after being accepted by the parties must have the legal effect of general jurisdiction. It is essential to note that, in principle, both parties are not permitted to request "re-mediation" based on dissatisfaction with the previous agreement. Thus, through mediation, all disputes will be definitively resolved either at the Central Environmental Dispute Resolution Committee or at the provincial Environmental Dispute Resolution Board. The jurisdiction of these two agencies will not overlap one another.

To enhance accessibility and comprehension of the order, procedures, jurisdiction, and related information concerning dispute resolution, it is recommended that the Central Environmental Dispute Resolution Committee establish a dedicated website for publicizing and providing legal guidance. Regulations pertaining to the sequence, procedures, costs associated with resolving environmental disputes outside the court, and contact details of competent authorities should be transparent, publicly available, and presented in a language that is easy to understand and familiar to the general public. The Committee should also release Annual Reports containing comprehensive statistics on the status of nationwide environmental dispute resolution outside the court, including the number of disputes received, success rates of the resolution, and backlogging rates, among other relevant data. This information would serve as a valuable resource for research and policy improvements. Furthermore, details of successfully resolved disputes should be made public, with exceptions made only in specific circumstances. Particularly for severe environmental disputes that have significant implications for the environment and require extensive remedial measures, the agreed-upon dispute resolution solutions should be publicly disclosed. This would enable residents, scientists, and society at large to access and actively monitor the progress of remedying the consequences caused by the offending party.

(ii) Publicity of regulations on the order, procedures, and costs of conducting mediation of environmental disputes in binding effective legislations.

In the future, it is imperative for the Vietnamese government to introduce distinct legislation that regulates the procedures and costs associated with environmental mediation. These

regulations can be incorporated within the legislation that governs the functions, tasks, and powers of the Central Environmental Dispute Resolution Committee, as mentioned previously. To ensure a cohesive and transparent legal framework, the new regulations pertaining to the order and procedures of environmental mediation must be applicable to all environmental disputes nationwide, irrespective of their scale, level of damage, or the number of parties involved. Even in localities where the establishment of a provincial Environmental Dispute Resolution Board has not been piloted, ad-hoc Mediation Councils set up on a case-by-case basis should strictly adhere to the prescribed procedures outlined in this new law.

To ensure consistent application, it is also necessary to amend the regulations on jurisdiction and mediation procedures in specialized environmental laws (such as Article 76 of the Water Resources Law). These amendments should align with the principle that all environmental disputes must be consistently resolved by a single competent authority, following a standardized procedure stipulated by law.
