1. Introduction

Together with economy and society, environment is considered as one of three pillars in sustainable development. Therefore, the environmental protection is having important meanings and life and death matter not only for Vietnam but also for the world. The enhancing widely and deeply industrialization process in the country and international integration have been opened new period in economic and social development in the country, which creates great opportunities for the country to grow rapidly and solidly. However, apart from opportunities, there are many difficulties that are needed to be well solved in order to ensure stable development, including environmental matters.

The socio-economic development has always been enclosed with exhausted forest and natural resource exploitation. Consequently, vast forest areas were destroyed seriously, especially watershed forests. According to database in 2005 made by FAO, Viet Nam is one of the countries where primeval forests were destroyed seriously that is occupied 2nd place after Nigeria.\(^1\) In reality, natural forests in Vietnam have been declined rapidly and level forest covering has been reduced seriously.

With vast areas of destroyed forest, however, the disposition of criminals that has been imposed penal penalties is ineffectively. Number of settled criminal cases is limited in comparing to number of illegally forest exploitations that have been occurred day by day. The application of provisions of criminal code in adjudication such crimes has many limitations. The main reason is that current legal regulations of the Penal Code have been having problems and inconsistencies. Therefore, in the scope of this presentation, we would like to mention to some regulations provided in the Penal Code regarding to crimes relating to forests; adjudicative practice and some recommendations.

2. Regulations of the Penal Code on destroying and exploiting forests and illegally timber transportation

- Breaching regulations on forest exploitation and protection (Article 175)

According to par.1 of Article 175 of the Penal Code: Those who commit one of the following acts causing serious consequences or who have already been administratively sanctioned for such act or have already been sentenced for this offense, not yet entitled to criminal record remission but still commit them, shall be subject to a fine of between five million dong and fifty million dong, non-custodial reform for up to three years or subject to a prison term of between three months and three years:

a) Illegally exploiting forest trees or committing other acts of violating the State’s regulations on forest exploitation and protection, if not falling under the cases specified in Article 189 of this Code;

b) Illegally transporting and/or trading in timber, if not falling into the cases specified in Article 153 and Article 154 of this Code.

2. Committing the crime in very serious or particularly serious cases, the offenders shall be sentenced to between two years and ten years of imprisonment.

3. The offenders may also be subject to a fine of between five million dong and twenty million dong.

Thus, the acts of timber exploitation/transportation and illegally trading in timbers may be prosecuted criminally in accordance to this provision if it is not belong to crimes regulated in Article 153 (Smuggling) and Article 154 (Illegal cross-border transportation of goods and/or currencies) of the Penal Code.

- Breaching regulations on forest management (Article 176)

According to Paragraph 1 of Article 176 of Penal Code “1. Those who take advantage of or abuse their positions and/or powers, committing one of the following acts and causing serious consequences or who have been disciplined for such acts but still commit them, shall be subject to non-custodial reform for up to three years or to a prison term of between six months and three years:

a) Illegally assigning forests and/or forestland or recovering forests and/or forestland;

b) Illegally permitting the transfer of the use purposes of forests and/or forestland;

c) Illegally permitting the exploitation and/or transportation of forest products.

2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between two to seven years of imprisonment:

a) In an organized manner;
b) Committing the crime more than once;

c) Causing very serious consequences;

3. Committing the crime, which entails particularly serious consequences, the offenders shall be sentenced to between five and twelve years of imprisonment.

4. The offenders may also be subject to a fine of between ten million dong and one hundred million dong, a ban from holding certain posts for one to five years.

- **Destroying forests (Article 189)**

   According to Paragraph 1 Article 189 of the Penal Code “1. Those who illegally burn or destroy forests or commit other acts of forest destruction, causing serious consequences or who have already been administratively sanctioned for such acts but still commit them, shall be subject to a fine of between ten million and one hundred million dong, non-custodial reform for up to three years or a prison term of between six months and five years.

   2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between three and ten years of imprisonment:

   a) In an organized manner;

   b) Abusing positions and/or powers or abusing the names of agencies or organizations;

   c) Destroying a very large forest area;

   d) Felling and destroying plants of specious and rare species on the lists prescribed by the Government;

   e) Causing very serious consequences.

   3. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between seven and fifteen years of imprisonment:

   a) Destroying a particularly vast forest area;

   b) Destroying protection forests, special-use forests;

   c) Causing particularly serious consequences.

   4. The offenders may also be subject to a fine of between five million dong and fifty million dong, a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.
In order to facilitate the application of Penal Code regarding to crimes relating to forests, on 08-3-2007, Inter-ministries have promulgated Circular No 19/2007/TTLT/BNN&PTNT-BTP-BCA-VKSNDTC-TANDTC guiding the application of some provisions of the Penal Code regarding to crimes in forest management, forest protection and forest product management and detailed guidance to factors for identifying crime and penalties; way to determine damages as well as detailed guidance on crimes violating regulations on forest exploitation and protection; Crime on breaching forest management; crimes on destroying forests.

3. Current situation on adjudication of crimes relating to destroying forests and illegally exploitation, transportation and trading in timbers.

The practical adjudication of crimes relating to destroying forests and illegally exploitation, transportation and trading in timbers in recent time has shown that criminal acts were happened in many areas, under many ways and with serious and complicated characteristics.

Violation acts in forest protection has normally and seriously occurred day by day, but the number of cases that were settled by the Court is limited. The destroying watershed forests, protective forests, illegally trading in and transportation for valuable and rare timbers were occurred in some locations, especially in Central Land of the country.

- Number of adjudicated cases

According to data provided by the Supreme People’s Court from 2007 to 2014, courts of all levels have settled 2801 cases with 5357 defendants committed crimes relating to environment, particularly, there were 2299 cases with 4568 defendants committed crimes relating to forest exploitation and protection; such as: Crimes relating to violating regulations on forest exploitation and protection (Article 175 of the Penal Code), courts settled 1232 cases with 2501 defendants; crimes relating to forest management (Article 176 of the Penal Code) 18 cases with 39 defendants were tried; crimes relating to destroying forests (Article 189 of the Penal Code) 1049 cases with 2028 defendants were tried.

Through statistical number, it can be seen that crimes relating to forests has occupied a majority portion. Among crimes relating to forests, the majority portion is the crimes violating to forest exploitation and protection and crime on destroying forests. The number of cases has been fluctuated from year to year. The punishments imposed by the Courts on such crimes are mainly pecuniary penalties, non-custodial reform and under 3 year-imprisonment. Courts have also imposed many suspended sentences that may cause the low education and preventive effects of the punishment.

- Regarding to criminal tricks
In the past, crimes related to forests had happened singly and mainly committed by people from ethnic minorities, however, today, the crimes frequently committed by organized criminal groups in the forms of gang or groups who committed crimes in separate stages in exploiting and transporting in timbers.

Subjects who committed crimes violating regulations on forest exploitation and protection have surreptitiously entered into forests that have not been permitted to exploit or prohibited to exploit in order to chop down the trees. This type of criminal acts has frequently occurred in many areas, especially in Highland areas.

Although forestlands have been granted to organizations, households and individuals for long-term use aiming at protecting and developing forest resources, paid flat rates for forest protection; however, the forest management is ineffective. Consequently, criminals taking unfair advantages of the situation have exploited and destroyed the forests, chopped trees and later they informed to local authorities about the chopped trees and asked local government to buy the trees.

People using such tricks are normally timber magnates, company owners who have business in processing timbers and forest products. They have always paid money to rent people from ethnic minorities, local workers or migrant workers who are poor and having living difficulties to undertake their purposes.

- Currently, many criminal gangs or groups were formed aiming at illegally exploit timbers and using rudimentary means to transport timbers to consumers.

These tricks, currently, have occurred in forest land having valuable woods which belongs to group IA, IIA having high economic value. These criminal activities cause serious harm to forest resources as well as cause disorder to social safety and difficulty to forest management and protection tasks.

- Criminals have been divided into small groups, separate and equipped simply that make them easily to enter into the forests to exploit forest products and later they transport the products gradually for consuming.

With these methods and tricks, the discovering and preventing the crimes have met many difficulties.

- Criminals have frequently taken advantages of the legal forest exploitation in order to exploit the forests illegally.

Practice has shown that, following regulations on allowing forest exploitation on areas that transfer forest use purposes and having approved plan. However, some people take these opportunities to exploit more than they were
allowed to exploit, later they use permission in order to legalize woods that were chopped illegally and consumed those woods.

- It can be seen from many cases that there were some connections, joining hands of people who have high position and power in forest protection with criminals in committing crimes relating to deforestation, forest exploitation, and illegal wood transportation and trading.

In order to well examine and control the transportation of forest products/resources, timely find out illegal acts, forest management organ has established mobile forest management units in provincial management departments, district management units as well as to assign works to commune forest management units. They have contributed greatly to reduce number of cases relating to forests. Nevertheless, some officers who are responsible for forest management have joined their hands with criminals to violate forest resources that they have duty to protect.

- Criminals use specialized vehicles, vehicles having fake plate numbers for transporting woods. This is the way criminals have frequently used in transporting valuable and rare woods that have high economic value.

In many locations, in order to transport woods illegally, the criminals have also used vehicles that the usage terms had expired without registered documents and cheap. In such circumstances, the vehicles have always been used in transporting very rare and valuable woods that are extremely expensive. When they were discovered by management agencies, they have run away leaving vehicles and woods.

- Difficulties in settlement of cases

In many cases, management agencies still have many errors in determining status participating in proceedings of the parties, especially, wrong determination of status of civil plaintiff and the victim; there are also mistakes in determining and evaluating evidence.

4. Recommendations

In order to improve the forest protection and improve adjudicative quality of cases relating to forests, we would like to propose following suggestions:

- Firstly, the State must have appropriate policy and strategy that are met with people’s willingness such as building roads, schools, hospitals, and other social benefits for people from ethnic minority groups…. In order to avoid the fact that criminals take advantages from difficulties and poor awareness of people from those groups into committing crimes and concealing crimes.

- Secondly, it is necessary to establish Environmental courts that are under people’s Court system.

The reason is to overcome short-term difficulties in environmental protection tasks in general and forest protection in particular, as well as to
enhance effectiveness of the forest management tasks, increasing punishment against crimes relating to forests and push to reform matters involving environment including forest protection. These are the measures commonly applied in many other countries. Hence, in coming time, Viet Nam should actively renew and uphold important roles of the Court in environmental protection in general and forest protection in particular.

- Thirdly, to amend and supplement the Penal Code, in which remove Article 175 and Article 176 regulating crimes relating to forest to Chapter regulating crimes against environment and to study on criminalization of legal entity and organization if they violate environmental regulations.