

The Role of Public Interest Litigation in Tobacco Control: International Experience and Implications for Vietnam

O Papel Do Litígio De Interesse Público No Controle Do Tabaco: Experiência Internacional E Implicações Para O Vietnã

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Abstract

This article analyzes the concept and characteristics of public interest litigation and its practical application in the tobacco sector in selected countries. The article also examines the current legal provisions of Vietnam on public interest litigation and makes recommendations to improve Vietnamese law to bring into full play the role of public interest litigation in protecting public health. This research shows that public interest litigation has positive effects on the prevention of tobacco harms such as strengthening law enforcement, advocating for changes in policy and law, drawing public attention, and raising public awareness. The research further finds that although public interest litigation has been in place in the current law of Vietnam for decades, it is rarely used with insignificant impact. This is due to several legal shortcomings and inadequacies that need to be addressed. To strengthen and effectively enforce the legal provisions on public interest litigation in Vietnam, the authors recommend broadening the scope of entities having the right to initiate public interest lawsuits such as government bodies in charge of health, the social insurance agency, and the People's Procuracy in Vietnam.

Keywords: public interest litigation; civil procedure; Procuracy; tobacco control; Vietnam.

Resumo

Este artigo analisa o conceito e as características do litígio de interesse público e sua aplicação prática no setor do tabaco em países selecionados. O artigo também examina as atuais disposições legais do Vietname em matéria de litígios de interesse público e faz recomendações para melhorar a legislação vietnamita, a fim de desempenhar plenamente o papel dos litígios de interesse público na proteção da saúde pública. Esta investigação mostra que os litígios de interesse público têm efeitos positivos na prevenção dos danos do tabaco, tais como o reforço da aplicação da lei, a defesa de mudanças nas políticas e na lei, chamando a atenção do público e aumentando a sensibilização do público. A investigação conclui ainda que, embora o litígio de interesse público esteja em vigor na legislação actual do Vietname há décadas, raramente é utilizado com impacto insignificante. Isto deve-se a diversas deficiências e inadequações jurídicas que necessitam de ser abordadas. Para reforçar e aplicar eficazmente as disposições legais sobre litígios de interesse público no Vietname, os autores recomendam alargar o âmbito das entidades que têm o direito de iniciar processos judiciais de interesse público, tais como órgãos governamentais responsáveis pela saúde, a agência de segurança social e o Conselho Popular. Procuradoria no Vietnã.

Palavras-chave: litígio de interesse público; processo civil; Ministério Público; controle do tabaco; Vietnã.

1 Introduction

Tobacco use is the single most preventable cause of death. Effective tobacco control plays a crucial role in ensuring a healthier global population (World Health Organization). It is truly disturbing that Vietnam has about 40,000 deaths annually caused by tobacco-related diseases, which is nearly four times higher than the number of deaths caused by traffic accidents) (Tinh, 2024, p. 395). Overall, Vietnam has an adequate legal framework for tobacco control, which is increasingly improved and compatible with international standards; however, the implementation of this law remains weak (Pham, 2015, p. 46). Prevention of tobacco harm through litigation is a measure that has been utilized globally, especially in countries with large populations and large amounts of tobacco use such as the United States, China, and India. Nevertheless, experiences of enforcing tobacco control laws through litigation in these countries show that initiating a civil lawsuit under the traditional theory of tort liability against tobacco companies is highly challenging and difficult to gain success. Thus, a new trend emerging in recent decades has been an increase in tobacco-related public interest lawsuits initiated by a competent state authority or social organization (Blanke, 2002). Public interest lawsuits do not always achieve direct success but have a positive impact on public opinion and policy-making, especially on changing policies and laws related to tobacco control. However, there are limited studies and discussions regarding public interest litigation in Vietnam.

Meanwhile, promoting public interest litigation is one of the directions for legal reform and judicial reform in Vietnam towards 2030 (Communist Party of Vietnam, 2022). Specifically, the leaders of Vietnam set out the task of “reviewing practice, studying and completing the legal provisions on initiating civil lawsuits in case the subject of civil rights is a vulnerable group or the case is related to the public interest but there is no person to initiate a lawsuit.” Against that backdrop, it is necessary to study thoroughly the concept and characteristics of public interest litigation and the experiences of other countries in promoting public interest litigation, especially in the tobacco sector.

This article contributes to the existing literature by offering an in-depth study on public interest litigation in Vietnam from a comparative perspective, particularly in the field of public health and tobacco control. First, the article analyzes the context, concept, and characteristics of public interest litigation. Second, it evaluates the practice of public interest litigation related to tobacco harm in some typical countries such as the United States, China, and India to draw experience for Vietnam. Third, the article examines the current legal framework for public interest litigation in Vietnam, identifies shortcomings, and makes recommendations to improve the provisions of the Civil Procedure Code and the Law on Tobacco Harm Prevention of Vietnam to

promote public interest litigation and improve the effectiveness of tobacco control through litigation.

2 Literature Review

There has been extensive literature on public interest litigation and its impact on access to justice and social changes. The existing scholarship has examined the concept and features of public interest litigation as well as the achievements and challenges of this type of litigation in practice. For example, Bhagwati (1984) looked at public interest litigation and judicial activism; Cummings and Rhode (2009) provided theoretical and practical insights on public interest litigation; Feldman (1992) explored public interest litigation and constitutional theory from a comparative perspective; Fowkes (2012) analyzed aspects of civil procedure in public interest litigation, especially the managerial role of judges. Scholars have also published comparative research on public interest litigation; for example, Yap and Lau (2010) examined public interest litigation in selected Asian countries such as China, Hong Kong, South Korea, Malaysia, Singapore, etc; Wang Zhao and McNamara (2023) analyzed “Environmental Public Interest Litigation in China” (Springer 2023); Monika Sangeeta Ahuja explored “Public Interest Litigation in India: A Socio-Legal Study” (Doctoral Thesis, University of London, 1995). However, few studies have looked at public interest litigation in the public health sector, especially in preventing tobacco harm, and if any, studies often examine large jurisdictions where public interest litigation is quite established and frequently used such as the United States, China, and India. For example, Blanke (2002) provides an overview and analysis of litigation and public inquiries as tools for tobacco control, focusing on the United States. Other studies on China and India can be mentioned such as Kaur *et al.* (2017), *Using Public Interest Litigation for Tobacco Control: Insights from India*, Indian Journal of Public Health; Huang, Jinrong (2018), *Public Interest Litigation and Tobacco Control in China*, in: Gonghuan Yang (ed.), *Tobacco Control in China*, Springer (2018); Cliff Sherrill, *Tobacco Litigation: Medicaid Third Party Liability and Claims for Restitution*, University of Arkansas at Little Rock Law Review (1997). However, public interest litigation in other Asian countries, particularly in Vietnam, has not been adequately studied. This article enriches the current literature by providing a closer look at public interest litigation from the angle of public health, particularly tobacco control, taking Vietnam as a case study.

3 Methodology

The authors utilized doctrinal legal research and comparative law methods to achieve the goal of the research. By analyzing primary sources such as legislation,

regulations, and cases in the United States, China, India, and Vietnam, as well as reliable secondary sources published in English and Vietnamese, the authors explore public interest litigation and its role in tobacco control, evaluates the current law in Vietnam governing public interest litigation, and makes recommendations to improve the law in Vietnam.

4 Theoretical Framework

This study is built upon the existing theoretical framework of public interest litigation. Public interest litigation originated in the United States in the late 19th century. In 1976, the term “public law litigation” was first used by American Professor Abram Chayes to describe the activities of lawyers and individuals with a community spirit, seeking to bring about changes to society through the filing of lawsuits in court to amend and enforce legal provisions (Chayes, 1976, p. 1281). Today, public interest litigation is recognized in the legal systems of many countries around the world and is lexically defined as “a legal action initiated in a court of law for the enforcement of public interest or general interest in which public or class of the community have pecuniary interest or some interest by which their legal right or liabilities are affected.” (Black’s Law Dictionary, 1990).

According to Yap and Lau (2010, p. 2), public interest litigation refers to the use of the forms, procedures, and substance of public law to redress two types of wrongs: (1) generalized grievances where the public wrong is suffered by members of society in general and (2) specific grievances where the wrong is suffered by specific segments of society, but remedying the wrong advances broader sociopolitical change among the public at large. Thus, public interest litigation gives rise to proceedings in court to ensure social justice and bring about the common good of the whole community. In particular, “community” is understood to include all classes and components of society, without discrimination on gender, social status, economic status, ethnic origin, religious belief, etc. Public interest litigation is used to enforce human rights and constitutional and statutory rights, or to advance the law and strengthen law implementation by the state.

In India, public interest litigation was first laid down by Judge Krishana Iyer in the case *Mumbai Kamgar Sabha v. Abdullabhai* in 1976 with the interpretation of the term “public interest” associated with the extension of the right of individuals to sue when the results obtained from this litigation benefit the majority of society (Biswas, 2017, p. 100). The Indian concept of “public interest litigation” refers to a legal process to provide justice to an individual or a group in matters relating to infringement of fundamental rights or denial of civil privileges (Kaur *et al.*, 2017). The goal of public interest litigation in India is to counter governmental lawlessness, administrative

deviance, and exploitation of disadvantaged groups by denying them their rights and entitlements (Kaur *et al.*, 2017).

Public interest litigation in China also has the purpose of protecting the common interests of the community, promoting social and legal change, specifically advocating for legal reform, policy change, law enforcement, or exposing unreasonable and illegal acts and policies. Unlike public interest litigation in the United States, public interest litigation in China is understood in a very broad sense. It is not only about initiating lawsuits in court but also includes other forms of legal proceedings such as filing petitions to state agencies and arbitrations and petitions to the legislature to consider the inadequacies of the law (Huang, 2018, p. 121).

Although there are different concepts and versions, in general, public interest litigation has the following characteristics:

First, the entity initiating public interest litigation may be the state or any individual or organization with the desire to initiate a lawsuit for the public interest. In countries around the world, the law usually stipulates that the state is the fundamental subject that is responsible for protecting public interests, so the right to handle violations as well as the right to initiate public interest litigation belongs to the state. However, given the development of society, with the tendency to promote the role of the people and expand the right to access justice of the people, the state is no longer the only subject with the right to bring lawsuits. Instead, the right to initiate public interest litigation nowadays is extended to other subjects such as individuals and social organizations.

Second, public interest litigation concerns the interests of a group/class of people, not the interests of an individual. Public interest litigation has broken the traditional notion of “locus standi” that only an individual whose rights or interests have been infringed can file a lawsuit. Public interests protected in cases of public interest litigation often involve the interests of vulnerable, marginalized, ignored, or mistreated groups. In other words, these groups of people are the vulnerable group/class in society. Typically, they fall into a situation where their rights are violated and affected, but due to different factors such as economic circumstances, social status, or any other reason, they cannot bring a lawsuit; thus, their right to access justice is obstructed and not guaranteed.

Third, the purpose of public interest litigation is to bring about the common good for the community, achieve the effectiveness of law enforcement, expose violations and the non-conformity of the law, and contribute to the development of relevant policies and laws. The success of public interest litigation benefits the community and the whole society. This is completely different from cases where an individual or organization initiates a lawsuit to protect its own interests or the interests of a few others.

Fourth, the basis for public interest litigation may be interests affecting the whole community or a large group in the community, usually related to issues such as public health, public safety, the environment, consumer protection, and discrimination.

Procedural law in many countries recognizes public interest litigation. In summary, public interest litigation is the act of filing a complaint or petition to the court to protect the legitimate rights and interests of the community or a group of people in the community in accordance with civil or administrative procedures.

5 Results and Discussion

5.1 Public interest litigation related to tobacco harm in selected countries

Public interest litigation is one of the modern trends of civil procedure. It contributes to ensuring justice and the people's right to access justice. Currently, the judicial systems of many countries in the world receive a large number of cases initiated in the public interest, including cases related to the harmful effects of tobacco. Within the scope of this article, the authors will analyze the practice of public interest litigation related to tobacco harm in three major countries: the United States, China, and India. The United States is considered the home of public interest litigation that is worth thorough examination. China shares many similarities with Vietnam as to economic, cultural, and social conditions as well as the legal system, and public interest litigation in China has developed immensely and rapidly in recent years after it was formalized in China's revised Civil Procedure Law and revised Administrative Procedure Law in 2017. Remarkably, China experienced nearly 20,000 public interest litigation cases resolved by courts at all levels from 2017 to 2021 (China Justice Observer, 2021). For India, it is also an Asian country with a large population where public interest litigation has gained notable success.

Public interest litigation related to tobacco harm in the United States

In the United States, civil litigation has been a frequently used tool to prevent and combat tobacco harm, to bring justice to individuals suffering from health damage due to tobacco harm, as well as to help make an impact in policy and law and raise society's awareness of tobacco control (Blanke, 2002, pp. 8-9).

The waves of tobacco-related lawsuits in the United States began in the 1950s. The first wave took place from 1954 to 1970, in which there were mainly tort cases filed by individuals asking tobacco companies to compensate for damages for the alleged disease caused by tobacco products on the grounds of various tort theories such as negligence, misrepresentation, and breach of warranty. The plaintiffs in most of these lawsuits failed because the cases were dismissed or withdrawn before reaching trial (Blanke, 2002, p. 8). None of the few cases that made it to trial gained success.

The second wave started in 1982 and continued until the early 1990s, in which it was still mainly individuals attempting to claim damages, alleging new legal theories

such as strict product liability and negligent failure to warn. The tobacco industry again successfully defended itself against nearly 200 tort cases except for the mixed result in the *Cipollone* case (Blanke, 2002, pp. 17-19).

The third wave emerged with government actions and class actions in 1994 (Blanke, 2002, pp. 25-27). Class actions were brought by anti-tobacco forces in the form of public interest litigation. In particular, this litigation focused more on accusing the tobacco industry of concealing the health consequences of smoking and the harm caused by exposure to secondhand smoke (Huang, 2018, pp. 121-122). One of the outstanding class actions of this period was *Castano v. American Tobacco Company*. In this case, the American Tobacco Company was accused of having been aware of the addictive effects of nicotine and intentionally using nicotine to entice tobacco users. However, the lawsuit was unsuccessful and was dismissed by the Court of Appeal on the grounds that the plaintiff lacked standing.

With the failure of class actions, the plaintiff in tobacco lawsuits was seen to shift to the “state”. During four years from 1994 to 1998, almost every state filed an action, resulting in five massive settlements covering all 50 states (Blanke, 2002, p. 25). The causes of action varied from law enforcement actions to product liability, unjust enrichment and third-party liability. Since May 1994, when the State of Mississippi filed the first state claim attempting to recover from the tobacco industry based on Medicaid expenditures, several states followed, such as Arizona, Connecticut, Florida, Indiana, Minnesota, Texas, etc (Sherill, 1997, p. 505).

In this research, the authors examine a typical lawsuit initiated by the Agency for Healthcare Administration of Florida. As the governing body of the Medicaid health insurance program,¹ the agency sued tobacco companies, claiming reimbursement of medical expenses already covered by Medicaid for patients with health problems caused by tobacco. This agency believed that tobacco companies should be responsible for compensating tobacco users for health damage, but because Medicaid had covered these costs, tobacco companies must reimburse Medicaid. The basis for the lawsuit was that tobacco companies had discovered the health risks and dangers of nicotine addiction but failed to warn the public.

The plaintiff’s standing to sue was based on the following grounds: First, because the state government paid for the health care costs of tobacco-related patients under the Medicaid program, according to the principle of subrogation, the state government had the right to bring a claim on behalf of Medicaid patients. Second, the lawsuit was right to ensure the principle of fairness based on the theory of unjust enrichment. Specifically, a person is not allowed to enrich himself unjustly at the expense of others (Black’s Law Dictionary, 1990). The tobacco industry made enormous profits by selling cigarettes to tobacco users, causing serious health problems, but the cost of healthcare

1 Medicaid is a federal and state program in the United States that provides health care coverage to eligible people based on the income and value of property owned by those people (usually the poor).

for tobacco users was paid through Medicaid. This benefited the tobacco industry indirectly and unreasonably because the cost of healthcare for tobacco users should have been incurred by the tobacco industry.

After this lawsuit, to improve the ability to reimburse expenses already made by Medicaid, in 1994, the state of Florida passed the Medicaid Third Party Liability Act. The provisions of this law facilitated reimbursement for the government by adjusting certain elements of the traditional tort liability theory: (i) applying the concept of joint liability for the recovery of compensations, (ii) eliminating the need to identify Medicaid individual recipients, (iii) applying the theory of market share liabilities² whereby the liability of tobacco manufacturers was calculated based on their market shares in the tobacco market, (iv) eliminating the defense of statute of limitations, (v) permitting the use of statistical data to prove causation and damages, and (v) permitting treble damages in cases of criminal violations. The Act also affirmed that the Agency for Healthcare Administration had a viable claim to recover compensation from tobacco companies independently of the rights of Medicaid patients. Subsequently, the Associated Industries of Florida came before the Florida Supreme Court requesting a review of the constitutionality of the Act. The Florida Supreme Court found the law to be constitutional but removed the provision on not requiring identification of patients who received Medicaid when applying the liability theory. The Court held that Florida's regulation violated the principle of due process because it assumed Medicaid payments had been properly made and did not give the defendant an opportunity to challenge. On the other hand, the Florida Supreme Court retained the provisions on joint liability and market share liability but did not allow the simultaneous application of both types of liability (Sherill, 1997, p. 503).

The Florida case sparked a wave of similar lawsuits in many other states. The success of tobacco-related lawsuits in the United States was still limited by the requirement to identify individuals who received medical compensation from Medicaid and to prove causation and damages. However, this did not mean that it was impossible to identify Medicaid patients who already have tobacco-borne disease problems. In addition, the controversy in lawsuits like the Florida case was caused by the following arguments: First, the tobacco industry claimed that it actually paid more for public healthcare through a special income tax in which the amount of tax collected was even greater than the payment for Medicaid patients. Second, in terms of personal liability, which is based on the theory of personal freedom, tobacco users had the right to make their own decisions about whether to use or not to use tobacco. If they chose to use it,

2 The market share liability theory is a doctrine in product liability law that allocates liability to a group of defendants according to their respective market shares of harmful product sales during the period of injury. This theory is in contrast to the traditional theory of liability which assigns liability only to damages that are directly and determinably inflicted. The concept of market share liability was first applied as a basis for compensation by the California Supreme Court.

they must take responsibility for their acts. Third, if the Medicaid claim was accepted, it would lead to a similar wave of lawsuits against the food, alcohol, or beer industry (Sherill, 1997, pp. 512-517).

Although there are numerous difficulties, it cannot be denied that public interest lawsuits like the Florida case have made a significant impact on policy and law. In addition, tobacco-related public interest litigation proved that tobacco caused serious health problems in the United States and around the world, exposing the tactics that the tobacco industry used to advertise products and cover up the harmful effects of tobacco smoke.

Public interest litigation related to tobacco harm in China

Compared to the United States, China is substantially different when it comes to public interest litigation. In the United States, most public interest cases involving tobacco harm are based on civil damages. On the contrary, in China, a great number of public interest cases are related to the enforcement of laws and regulations on tobacco harm prevention, including regulations on advertising, trademarks, packaging, information disclosure obligations, etc.³ Therefore, while the defendants in public interest cases related to tobacco harm in the United States are mainly tobacco manufacturers, the defendants in China are mainly state agencies with relevant functions and tasks related to tobacco control.

Public interest lawsuits in China in recent years have been initiated by individuals or social organizations against state agencies for non-compliance with tobacco control laws; however, the success of these cases was quite limited. For example, between 2013 and 2016, a coalition of public interest lawyers across 15 Chinese cities initiated 52 public interest lawsuits to promote the enforcement of tobacco advertising laws in mass media and public places. Only 36 out of 52 cases received a response, and 31 advertisements were removed (Cui *et al.*, 2022, p. 1).

In 2017, the revised Civil Procedure Law and the revised Administrative Procedure Law of China officially recognized the Procuratorate's right to initiate civil and administrative cases for the public interest (Library of Congress, 2017). Article 58 of the Civil Procedure Law provides that:

For acts that pollute the environment, violate the legitimate rights and interests of a large number of consumers, and other acts that harm the public interest, relevant agencies and organizations have the right to initiate lawsuits to the People's Court in accordance with the law. When the People's Procuratorate discovers in the

3 Jinrong Huang (2018), Public Interest Litigation and Tobacco Control in China, in: Gonghuan Yang (ed.), Tobacco Control in China, Springer (2018), pp. 121.

course of its duties acts that harm the ecological environment and resource protection, infringe upon the legitimate rights and interests of many consumers in the field of food safety, pharmaceuticals, and other acts that harm the public interest, if there are no agencies or organizations to initiate a lawsuit or even if there are but they do not initiate a lawsuit, the People's Procuratorate may initiate a lawsuit to the People's Court. In case an agency or organization specified in the preceding paragraph initiates a lawsuit, the People's Procuratorate may support the initiation of the lawsuit.

According to the above provision, under Chinese law, agencies, organizations, and the Procuratorate have the right to initiate civil lawsuits for the public interest. Even before the revision of the Civil Procedure Law in 2017, public interest lawsuits initiated by the Procuratorate had begun in 2015 through a pilot program in 13 provinces and was officially recognized nationwide in 2017 (Luong & Le, 2023).

Similarly, Article 25 of China's revised Administrative Procedure Law provides:

In the course of performing its tasks, if the People's Procuratorate finds that an administrative agency with the responsibility to supervise and manage in the fields of natural resources protection, ecological environment, food safety, pharmaceuticals, state property protection, and transfer of land use rights under state ownership to perform unlawful powers or inaction affecting the interests of the State or public interests of society or violated persons, the Procuratorate has the right to propose to the administrative agency and urge them to perform their tasks in accordance with the law. In case the administrative agency fails to perform its duties under the law, the People's Procuratorate shall initiate a lawsuit to the People's Court in accordance with the law."

It is observed that tobacco-related public interest lawsuits in China brought by the Procuratorate are more likely to succeed than those brought by individuals or social organizations. This can be explained by the fact that the Procuratorate, as a state power that performs a supervisory function, has sufficient capacity and independence to effectively bring lawsuits in the public interest, enforce laws, and strengthen the deterrence of tobacco harm in society. Pursuing tobacco-related cases often requires large costs and it is very difficult to prove damages, thus the Procuratorate has more advantages than individuals or social organizations in initiating lawsuits. In addition, individuals and organizations will often find it difficult to prove their standing to bring lawsuits. In contrast, the Procuratorate, with the role of initiating lawsuits for the

public interest mandated by the law, will more easily prove its standing in cases related to tobacco harm.

Public interest lawsuits initiated by the Procuratorate in China mainly focus on environmental protection and food safety, and to the best of the authors' knowledge, there has been no civil case related to claims for damages due to tobacco harm. Regarding tobacco control, there has been only an administrative lawsuit brought by the Procuratorate. On May 17, 2019, the People's Procuratorate of Haidian district, Beijing city initiated a lawsuit against the Market Supervision Department and the Tobacco Monopoly Department of Haidian district for the public interest. The Procuratorate argued that the two agencies failed to protect minors from exposure to tobacco. Chinese law prohibits the sale of tobacco within 100 meters around primary and secondary school areas and requires the use of a sign prohibiting the sale of tobacco to minors. On May 24, 2019, the Procuratorate sent a document to the Tobacco Monopoly Department and the Market Supervision Department presenting the reasons for initiating the lawsuit and providing solutions. In July 2019, the Tobacco Monopoly Department and the Market Supervision Department both agreed that all illegal activities would be dealt with. Then, in a short time, the two agencies conducted inspections of tobacco business establishments near 85 primary and secondary schools as well as business establishments within a 100-meter radius around the schools. As a result, the agencies ordered 14 business establishments to apply for permits and prepare dossiers to investigate 09 unlicensed establishments. These agencies also implemented sanctions for establishments that sold tobacco illegally and did not have a sign banning the sale of tobacco products to minors (Huang, 2018).

Following this lawsuit, the Haidian District Office of the National Patriotic Health Campaign Committee implemented the "Action Plan to Improve Tobacco Business Establishments Around School Areas" and established leadership teams to implement the plan. The case also spread to Beijing, leading to further law enforcement activities. In particular, on October 29, 2019, eight agencies including the National Health Commission, the Ministry of Education, and the Women's Federation launched and implemented many campaigns to strengthen tobacco control for youth, enhance anti-smoking education, smoke-free school campaigns, etc.

Tobacco-related public interest litigation in China is featured by the active role of the Procuratorate, and it has expanded beyond civil litigation to administrative litigation to make law enforcement agencies accountable for more vigorous implementation of tobacco control law. Similar to Vietnam, China has a long-standing tradition of paternalism which emphasizes the role of the state. China also received profound influence from Soviet law, including the Procuracy or Procuratorate, the government body in charge of supervising other agencies' activities (Bui, 2017). Therefore, the experience of China in public interest litigation led by the Procuratorate is highly relevant for Vietnam.

Public interest litigation related to tobacco harm in India

India is the world's second largest consumer of tobacco products (Kaur *et al.*, 2017, p. 25). In India, public interest litigation has significantly contributed to the cause of tobacco control and extensively promoted the human rights approach to tobacco control. The Supreme Court of India's rules of standing (*locus standi*), are more liberal than in other jurisdictions and anyone asserting a violation of fundamental rights can file a claim in one of the appellate courts. A public interest litigation lawsuit in India may be initiated in a court of law either by the court itself or by any individual or a non-government organization (NGO). Courts have provided creative interpretations of the Indian Constitution to read social and economic rights into fundamental rights, thereby making them judicially enforceable. For example, the "right to life" in Article 21 of the Indian Constitution has been expanded to include the "right to health." The substantive recognition of the right to health as essential to living with human dignity has thus allowed the judiciary to directly address human suffering from tobacco harm (Kaur *et al.*, 2017). Public interest litigation in India has made a remarkable impact on government action on issues for which no specific law existed and catalyzed the development of new laws or better enforcement of existing laws. A typical case was the Deora case in 2001, where the Supreme Court of India granted a writ petition filed by the President of the Mumbai Regional Congress Committee against both the Union of India and major Indian tobacco companies. The petition was grounded in the fundamental constitutional rights of citizens to life, health, and a clean environment, and asserted that the Union of India failed to safeguard public health and failed to act to control tobacco use. The petition requested that the Ministry of Health and Family Welfare be directed to formulate a comprehensive national tobacco control policy, including the elimination of public smoking, adoption of stronger health warnings on cigarettes, strong enforcement of advertising restrictions, control of sales to children, and establishment of a fund financed by tobacco companies to compensate victims of smoking (Blanke, 2002, p. 38). The case was a great success as the Supreme Court ordered the states of the Indian Union to immediately ban smoking in hospitals, schools, railways and public transports, courts and public offices, libraries, and auditoriums nationwide (Blanke, 2002, p. 38).

Other notable achievements of tobacco-related public interest litigation in India are successful advocacy for many states to ban gutkha, a smokeless tobacco product and prevention of the government's participation in a global tobacco industry event. Furthermore, the government was instructed by the court to enact a policy to prevent future tobacco industry influence on government decisions. A more recent typical case of tobacco-related public interest litigation is *Burning Brain Society v. Unions of India* (2012). In this case, a public health organization, Burning Brain Society, brought

a lawsuit against the Indian government and several state governments seeking to ban the operation of hookah bars. The petitioners asserted that nicotine is a poisonous drug and that its use in hookah violated the right to life guaranteed by the Indian Constitution. The petitioners further argued that concentrated nicotine was added to the hookah tobacco to create a more dangerous and addicting product. The court found the tobacco products used in hookah to be commonly laced with nicotine and that this was a harmful and dangerous drug. Ruling for the petitioners, the court ordered the closing down of hookah bars and required the States to create a permanent task force to monitor and enforce the use of nicotine in hookah bars and to pursue criminal penalties against violators of the law.

Public interest litigation in India is featured by the frequent invocation of constitutional rights, the active role of NGOs, and the high rate of success for petitioners. All of public interest litigation actions in India were initiated by individuals or NGOs working on tobacco control and were generally decided within a short time with outcomes in favor of the petitioners. Public interest litigation has proven to be an effective tool for enforcing tobacco control measures and stopping the tobacco industry from engaging in activities that are detrimental to public health. Petitioners usually claim constitutional rights such as the right to life and right to health rather than claim civil damages. The impacts of public interest litigation on tobacco control in India are profound. It can reveal the tobacco industry's deception tactics, shape opinions, force changes in the conduct of tobacco companies, or force governments to act. Furthermore, in some cases, public interest litigation may even generate funding to compensate victims or support tobacco control activities.

5.2 Current Vietnamese law on public interest litigation: Law in book but not in action

“Public interest” and “public interest litigation” are not unfamiliar concepts in Vietnam. The socialist ideology emphasizes public interest and prioritizes public interest over private interest. Inspired by the Soviet civil procedure law, the mechanism of initiating a civil lawsuit to protect the public interest or the state's interest has been made available under Vietnam's civil procedure law since the 1980s. Although there are no provisions in Vietnamese legislation using the term “public interest”, based on the provisions of Article 14.2 of the 2013 Constitution, public interest can be understood as benefits related to national defense, security, social order and safety, social morality, and public health.

The right to initiate civil lawsuits for the public interest was recognized quite early in Vietnam in the Ordinance on the Procedure to Handle Civil Cases of 1989, which was later replaced by the 2004 Civil Procedure Code. Article 162.3 of the 2004 Civil Procedure Code allows certain agencies and organizations to file a lawsuit to protect

the State interest, public interest, or rights and interests of other individuals and entities in case nobody initiates the lawsuit. This provision is revised by Article 187 of the current Civil Procedure Code of 2015, broadening the scope of entities that can initiate a lawsuit to protect others' interests.

Under current law, only agencies and organizations are allowed to initiate public interest lawsuits. In other words, an individual has no right to initiate a lawsuit to request the court to protect the public interest. In case agencies or organizations litigate in the public interest, the plaintiffs of the civil cases are those agencies or organizations themselves, specifically, state management agencies for families, state management agencies for children, Vietnam Women's Union, labor collective representative organizations, and social organizations participating in protecting the interests of consumers. In addition, other agencies and organizations within the scope of their tasks and powers have the right to initiate civil lawsuits to request the protection of public interests and State interests in their respective fields. For example, agencies in charge of state management for family- and child-related affairs and the Vietnam Women's Union have the right to bring family cases in accordance with the Law on Marriage and Family; labor collective representative organizations have the right to bring labor cases where it is necessary to protect the legitimate rights and interests of the collective of employees or when authorized by the employees, and social organizations involved in protecting the interests of consumers have the right to initiate lawsuits on behalf of consumers to protect the interests of consumers or initiate lawsuits for themselves in the public interest in accordance with the Law on Protection of Consumers' Rights.

Previously, the Council of Justices of the Supreme People's Court also gave directions regarding the right to initiate civil lawsuits to protect public interests and State interests in Article 3 of Resolution No. 05/2012/NQ-HDTP dated December 3, 2012. Accordingly, agencies and organizations having the right to initiate civil lawsuits to request the court to protect public interests and State interests must meet the following conditions: First, such agencies and organizations are mandated to exercise state management and social management in a specific field. Second, public interests and State interests that the court is requested to protect fall into the field within the responsibility of those agencies or organizations.

Concerning tobacco harm, there have been no public interest cases litigated in Vietnamese courts, but if there were such as case, we believe that the plaintiffs may rely on Article 187 of the Civil Procedure Code to prove standing. Specifically, the government agency in charge of public health, i.e., the Ministry of Health, may bring a lawsuit against tobacco companies for doing harm to public health and safety, or social organizations involved in consumer rights may bring a lawsuit against tobacco companies for doing harm to tobacco users. The social insurance agency may also

bring a lawsuit against tobacco companies based on the third-party liability theory as analyzed in the previous section with the Florida case as an example. Nevertheless, these entities indeed do not have the expertise and experience to litigate these cases.

In practice, the provision on the right to initiate civil lawsuits to protect public interest in the Civil Procedure Code is hardly implemented. By 2014, this provision had been mainly utilized by the social insurance agency to litigate against enterprises owing social insurance premiums due to these enterprises' failure or delay in paying social insurance premiums for employees. Nevertheless, since the Law on Social Insurance 2014 was promulgated, the social insurance agency only had the right to handle violations or propose to competent state agencies to handle violations of social insurance, unemployment insurance, and health insurance law. Therefore, the court no longer accepts civil cases filed by the social insurance agency against employers to claim social insurance payment because the agency lacks standing. In this case, according to Article 14 of the Law on Social Insurance, only trade unions have the right to initiate civil lawsuits against enterprises for violations of social insurance law that affect the legitimate rights and interests of employees and labor collectives. Apart from this type of case, Vietnam has not seen any cases filed under Article 187 of the Civil Procedure Code on the right to initiate civil lawsuits to protect State interests or public interests, which shows that this provision has no actual legal effect and is almost dead on paper. Unsurprisingly, there have been no lawsuits relating to tobacco harm prevention in Vietnam, whether initiated in the private or public interest. This can be explained by the following reasons:

First, Vietnamese civil procedure law contains several provisions inherited from the Soviet civil procedure law, which are more aspirational than practical. The provision on the right of certain government agencies and social organizations to initiate a lawsuit to protect the public interest is an example. The legal provisions are already in place while the mechanism and conditions to implement them are missing, such as a truly strong and independent judiciary, relevant government agencies and social organizations that are skillful and experienced in litigating public interest cases.

Second, the procedure of initiating a public interest case in Vietnam is quite burdensome. Although the Civil Procedure Code has officially recognized the right of government agencies and social organizations to bring lawsuits for the public interest or others' interest, it is difficult to determine whether an agency or organization is eligible to file a complaint and whether the agency or organization can represent the injured parties that they aim to protect through litigation. For example, in labor cases, courts require the trade union to obtain authorization from all employees to initiate a lawsuit on behalf of the employees. This truly discourages public interest litigation.

6 Conclusion

Public interest litigation has certain positive effects on the prevention of tobacco harm. In many cases, public interest litigation has no direct effect on holding tobacco companies liable for damages but has an important indirect effect. Public interest litigation has made positive impacts on law enforcement and advocated for changes in policy and law. It also garners public attention and enhances awareness of society about the harmful effects of tobacco and the importance of tobacco control.

In line with the global trend, public interest litigation in general and tobacco-related public interest litigation in particular need to be strengthened in every country, including Vietnam. Through resolving cases filed in the public interest, the court will detect violations in law enforcement and shortcomings in policy and law, from which relevant stakeholders can make proposals and recommendations to improve existing laws and enhance the efficiency of law implementation. Tobacco-related public interest litigation also contributes to better protecting the interests of the people, especially vulnerable groups like minors.

Judicial practice in Vietnam shows that, without specific legal provisions, it is difficult to initiate public interest litigation. Therefore, to strengthen and effectively enforce the provisions on public interest litigation in the tobacco sector, the procedural law should specify the entities having the right to initiate lawsuits. It would be reasonable to include agencies and organizations with management functions and tasks in the field of tobacco and healthcare of the people in the scope of entities eligible to initiate lawsuits in the public interest. In addition, from China's experience, the Procuracy is an important and effective institution to initiate lawsuits in the public interest. Therefore, the authors recommend that the Law on Tobacco Harm Prevention of Vietnam supplement the following provision: "The state health management agency, the Vietnam social insurance agency, and the People's Procuracy shall have the right to initiate civil lawsuits related to the harmful effects of tobacco to protect the public interest and the State interest".

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