THE FORM OF WARNING SANCTION IN THE LAW ON HANDLING ADMINISTRATIVE VIOLATIONS IN VIETNAM

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Abstract
Sanctioning of administrative violations is considered an effective solution in the struggle and prevention of administrative violations; it includes application of sanction forms, remedial measures with respect to individuals and organizations committing acts of administrative violations which are implemented by the competent persons. Among the sanctions imposed for administrative violations, warning is a special form of sanctions and is commonly applied in the fields of state management. The paper analyzes the theoretical and legal issues about the form of warning sanction in accordance with the Vietnamese law, shows some shortcomings on the regulation of this sanction and makes proposals for improvement.

Keywords
Warning, administrative violation, administrative liability, administrative sanctions, Vietnamese Law

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I. Introduction

Administrative violations are among the types of law violations, however, compared to other law violations such as criminal law violations (crimes), civil law violations (civil violations), violations of state discipline (disciplinary violations), administrative violations are the most common type of law violations in Vietnam.² To prevent and combat administrative violations, the law stipulates that individuals and organizations committing administrative violations will have to bear the legal responsibility; in this case — administrative liability.

In theory, administrative liability is the consequence of an administrative violation, which is reflected in the application by the competent persons, who have the authority to enforce administrative law sanctions on individuals, organizations committing acts of administrative violations, according to the procedure prescribed by the promulgated regulations. It is the State’s response to the subject who commits the administrative violation, resulting in the subject incurring unfavored physical or mental consequences. Formally, administrative liability manifests itself through the coercive forms (measures) applied to violating subjects, including sanctions and remedial measures. In terms of content, it is the negative assessment of the State and the society for the violations and its implementers.³ Thus, it can be understood that the

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² Dinh Phan Quynh, Discuss on the concept of administrative violations, 4 Vietnam Lawyer Journal 1 (2016).
³ Nguyen Cuu Viet, Vietnamese Administrative Law Curriculum, at 507 (National Political Publisher, 2013).
sanctions for administrative violations are the outward demonstration of administrative liability.

Having been researched the legal regulations on sanctioning administrative violations in Vietnam so far, the author realized that there were not any regulations defining the form of sanctioning administrative violations but listing the specific sanctions to apply to administrative violations. This has caused certain difficulties in the perception of the form of sanctioning administrative violations. From a scientific perspective, there are documents that indicate the form of sanctions which are administrative coercive measures prescribed by law for the subject of administrative violations, showing the assessment of the State in terms of the level of dangers towards the society of administrative violations. Setting up a system of sanctions that are stringent enough to meet the requirements to fight against administrative violations is always the first task of the law on handling administrative violations.4

Currently, the form of sanctions for administrative violations in Vietnam prescribed in Article 21 of the Law on Handling Administrative Violations 2012 includes: i. Warning; ii. Fines; iii. Stripping off the right to use permits, professional practice certificates in a definite term; or suspension of operation in a definite term; iv. Confiscating material evidences, means of administrative violation used to commit administrative violations; v. Expulsion. Among the above-mentioned sanctions, “Stripping off the right to use permits, professional practice certificates in a definite term; or suspension of operation in a definite term” are the two different sanctions but the Law on Handling Administrative Violations 2012 combines them.5 Thus, it can be seen that there are currently six sanctions applied in sanctioning administrative violations in Vietnam. Diversifying the sanctioning forms in order to raise the autonomy of the person with sanctioning competence and ensure that the sanctioning form is applied uniformly and fairly, suitable to the nature and severity of each violation.6

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4 Scientific commentary on the Law on Handling of Administrative Violations in 2012, at 213 (Nguyen Canh Hop ed., Hong Duc Publisher, 2017).
5 Nguyen Cuu Viet, Vietnamese Administrative Law Curriculum, at 522 (National Political Publisher, 2013).
6 Nguyen Nhat Khanh, Improvements of Legal Regulations on Additional Sanctions in the Administrative Violations, 21 Legislative Studies 31 (2019).
Among the above sanctions, **the form of warning sanction** (herein after referred to as “**warning**”) is quite a common form of sanction. According to the Law on Handling Administrative Violations 2012, warning may be imposed on individuals and organizations that commit non-serious administrative violations which involve extenuating circumstance(s) and are, under regulations, subject to warning, or may be imposed for all administrative violations committed by minors who are between full 14 and under 16 years old. Warning must be decided in writing.\(^7\)

## II. The specific characteristics of warning in the Law on Handling Administrative Violations

**Firstly, warning is only applied as a main sanctioning form, not as an additional sanctioning form.**

Based on the nature of the sanctioning forms, they are classified into two categories; main sanctioning forms and additional sanctioning forms. In particular, the main sanctioning form is the type of sanction applied independently for each administrative violation without necessarily applying other sanctioning forms attached. Meanwhile, additional sanctions are those that cannot be independently applied and must be accompanied by a main sanction. If the person who is competent to issue the sanctioning decision only has an additional sanctioning form but no main sanctioning form, the sanctioning decision is illegal. The main sanctioning form expresses the official attitude of the State to the violation, hence the law stipulates that each administrative violation will bear only one main sanctioning form. Meanwhile, the stipulation of additional sanctions is to perform the function of supporting the main sanctioning form, a legal measure to help the sanctioning to be accurate, and at the same time, it helps the state agencies to apply measures to eliminate conditions that individuals or organizations violating may use to continue the violations. This function of the additional sanctioning form will help the main sanctioning form to achieve the precautionary purposes by preventing violators from continuing to commit administrative violations in the future.\(^8\)

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\(^7\) Law on Handling of Administrative Violations in 2012, Art. 22.

\(^8\) Scientific commentary on the Law on Handling of Administrative Violations in 2012, at 229 (Nguyen Canh Hop ed., Hong Duc Publisher, 2017).
Under the provisions of the Law on Handling Administrative Violations 2012, warning is only applied as a main sanctioning form and not as an additional sanctioning form. As a form of main sanction, warning is applied independently without necessarily applying the additional sanctions.

**Secondly, warning shall be applied in two cases.**

In the first case, for individuals aged full 16 years or older and organizations committing administrative violations, warning may be applied only if all the following conditions are fully met: i. non-serious administrative violations; ii. involve extenuating circumstance(s); iii. under the regulations, warning will be imposed.

In the second case, warning will be applied to all administrative violations committed by minors aged between full 14 and under 16 years. For this group of subjects, although their administrative violations are serious, the competent persons must also apply warning but no other sanctions. This shows most clearly the protection of the State for children, a group of subjects that are specially protected by the State, law and the society. This provision also reflects the principle of sanctioning minors in Clause 1, Article 134 of the Law on Handling Administrative Violations 2012: “The handling of minors (including children) who have committed acts of administrative violations is implemented only in necessary cases aiming to educate, assist them to repair mistakes, develop healthily and become useful citizens of society.”

For example: On July 19, 2019, the Police Chief of Chon Thanh District, Binh Phuoc Province, Vietnam issued Decision No 46/QD-XPHC to sanction administrative violations against Ngo Thi Thu Thao (born on November 3, 2003) for committing acts of borrowing identity card to commit acts contrary to law provisions. According to Point c Clause 2 Article 9 of Decree No 167/2013/ND-CP, the act of “Hiring, borrowing or renting or lending identity cards to other people to perform acts in contravention of law” will be subject to a fine of between VND 1,000,000 and VND 2,000,000. However, at the time of

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9 Law on Handling of Administrative Violations in 2012, Art. 21 (2).
10 Article 1 of the Children Law in 2016 prescribes: “A child is a human being below the age of 16”.
committing the above violation, Ngo Thi Thu Thao was under 16 years of age, so the competent person applied a sanction of warning instead of a fine.

**Thirdly, warning shall be decided in writing.**

Based on the provisions of the Law on Handling of Administrative Violations in 2012, the sanctioning of administrative violations may be carried out according to the procedures of making records (normal procedures) or not making records (simple procedures). Sanctioning procedures without making records shall be applied in case of warning or a fine of up to VND 250,000 for an individual or VND 500,000 for an organization, except for cases of administrative violation detected by the use of means, technical and professional equipment that must be sanctioned by the procedures of making records.\(^\text{11}\) Since this provision can be determined when applying warning to individuals and organizations committing administrative violations, the persons with sanctioning competence shall apply the sanctioning procedures without making records. However, it should be noted that, according to the provisions of law, the application of warning must be in the form of sanctioning decisions in writing. Sanctioning in oral form will not be legally valid and will not be considered as warning.

**Fourthly, the main purpose of warning is to educate the sense of observing the law of the subject of administrative violations.**

The forms of administrative sanctions are the means to ensure that administrative law provisions can fulfill the task of protecting the rules, social order and interests of the State, legal rights and interests of citizens and organizations, and educate people to observe the law.\(^\text{12}\) The application of sanctions to violators is aimed at many purposes such as punishment, deterrence, education against violators, or prevention

\(^\text{11}\) Law on Handling of Administrative Violations in 2012, Art. 56 (1), Art. 57 (1).

\(^\text{12}\) Scientific commentary on the Law on Handling of Administrative Violations in 2012, at 226 (Nguyen Canh Hop ed., Hong Duc Publisher, 2017).
of violators continuing to commit administrative violations. However, each form of sanctions reflects the above purposes in a different aspect. The purpose of fines is manifested by depriving a person of material benefits directly from the violating subject, causing them to suffer property damage and this clearly reflects the purpose of punishment which is to deter the violating subjects. Sanctioning deprivation of the right to use licenses, professional practice certificates for a definite time or suspension of operation for a definite time shall be imposed on individuals or organizations that seriously violate the activities stated in the licenses or the certificates. The deterrent purpose of this form of sanction is reflected in the temporary deprivation of the right to use licenses, professional practice certificates or the forced suspension of operation for a certain period of time rather than invalidating the values of the legal license of the subject of administrative violations. The sanctioning form of confiscation of material evidences of administrative violations and means used for administrative violations is applied to prevent the possibility that violating subjects may continue using such material evidences and means to commit violations in the future. The administrative sanction of expulsion is applied to end foreigners’ ability to continue administrative violations when forcing them to leave the Vietnamese territory. Meanwhile, the warning represents the public reprimand of the State against individuals and organizations committing administrative violations. The deterrence of this form of administrative sanction is reflected in causing the subject to suffer certain mental damages rather than causing direct economic damage like other sanctions. The mental loss suffered by the sanctioned subject is the negative assessment of the State about their sense of law observance, forcing them to have a change in awareness and action so as not to commit other administrative violations in the future. Thus, compared with other sanctions for administrative violations, the warning is considered the lightest form of sanctions, the purpose of this sanction is to educate rather than to punish with an aim to respect the observance of the state management order.13

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13 Scientific commentary on the Law on Handling of Administrative Violations in 2012, at 234 (Nguyen Canh Hop ed., Hong Duc Publisher, 2017).
III. Some practical issues of Warning in the Law on Handling Administrative Violations in Vietnam

3.1. “Administrative violations with extenuating circumstances” when applying warning

As stated, for individuals aged between full 14 and under 16 who commit administrative violations, the sanction in all cases should be warning. Therefore, for this group of people who only need to meet the age conditions, the competent person will automatically apply warning without regard to other conditions attached. Meanwhile, for individuals aged full 16 years or older and organizations committing administrative violations, warning may be applied only when all the following conditions are fully met: i. non-serious administrative violations; ii. involve extenuating circumstance(s); iii. under the regulations, warning will be imposed. In other words, if one of these three conditions is missing, warning will not be imposed.

Currently, the provisions on the sanctioning forms and conditions of application belong to the competence of the National Assembly through the content of the Law on Handling Administrative Violations 2012, and the determination of the type of administrative violations (serious or non-serious) and which sanctions are imposed under the Government’s authority through the promulgation of Decrees on sanctioning administrative violations in specific fields. Therefore, from the author’s point of view, the first condition “non-serious administrative violation” and the third condition “under the regulations, warning will be imposed” is entirely due to the decision from the Government. The person with sanctioning competence will not be able to conclude by himself whether an administrative violation is serious or not, but must be based on the provisions of the Decrees on sanctioning administrative violations.

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14 Article 4 of the Law on Handling Administrative Violations 2012 stipulates: “Pursuant to regulations of this Law, the Government shall prescribe acts of administrative violation, sanctioning forms, levels of sanction, remedial measures applicable to each act of administrative violation; the sanctioning competence, specific fine levels according to each title and competence for taking minutes for administrative violations in each the state management sector; the regime of application of administrative handling measures and stipulate the forms of records, the forms of decisions being used in administrative violation sanctions.”
violations in specific fields. At the same time, the imposition of any sanction is the right of the subject having the sanctioning competence, but they can only decide to apply the sanctions prescribed in the Government’s Decrees.

In addition, the author believes that the third condition “under the regulations, warning will be imposed” implies the first condition “non-serious administrative violations.” The rationale for this assertion is that the Law on Handling Administrative Violations 2012 only once referred to the phrase “non-serious administrative violations” as one of the three conditions for application of warning. This means that when the Government stipulates that an administrative violation will be imposed with warning, it also indirectly asserts that it is “non-serious administrative violation.” To determine whether the administrative violation satisfies the first and the third condition in order to apply warning or not, then the persons with sanctioning competence only need to compare with the Government’s Decree prescribing the sanctioning forms applicable to such acts, if warning is prescribed, these two conditions are satisfied.

Therefore, the only remaining condition that a person with sanctioning competence must determine before deciding to apply warning to the violating subject, which is “Administrative violations with extenuating circumstances.” Extenuating circumstances are specified in Article 9 of the Law on Handling of Administrative Violations in 2012, including:

— An administrative violator has taken an act(s) to prevent or limit consequences of his/her violation or voluntarily remedy consequences and pay damages;

— An administrative violator has voluntarily reported his/her violation or has shown sincere repentance for the violation, or has actively assisted functional agencies in detecting or handling administrative violations;

— A person commits an administrative violation in the state of being emotionally provoked by an illegal act of another person; or acts beyond the legitimate defense limit or beyond requirements of an emergency circumstance;
— A person commits an administrative violation under force or due to his/her material or spiritual dependence on another;
— An administrative violator is a pregnant woman, a weak aged person or a person suffering an illness or disability which deprives him/her of the ability to perceive or control his/her acts;
— A person commits an administrative violation due to his/her particularly difficult plight which is not attributable to his/her acts;
— A person commits an administrative violation due to his/her ignorance;
— Other extenuating circumstances stipulated by the Government.

It can be seen that the advantage of stipulating “administrative violations with extenuating circumstances” is the condition for applying warning, showing the differentiation of the nature and degree of danger of administrative violations compared with cases where other sanctioning forms are applied. However, this condition also raises a number of inadequacies, thereby causing many difficulties for the competent person when carrying out the actual sanction.

Through research, the author found that there are two ways of prescribing warning for administrative violations in various Decrees of the Government.

The first way is that an administrative violation shall be imposed in warning or fine.15 For example, Clause 1 Article 28 of Decree No 71/2019/ND-CP on sanctioning administrative violations in the field of chemicals and industrial explosives stipulates: “A warning or a fine ranging from VND 500,000 to VND 1,000,000 shall be imposed on entities involved in chemical activities for failure to report all contents related to chemical activities.”

This type of regulation creates conditions for the competent person to take initiative in the process of performing state management activities in order to apply the law in accordance with certain circumstances and purposes. Therefore, depending on the specific situation, the competent person may consider to apply warning or a fine to the violator. However, this regulation gives rise to an overlap in the application of warning and

15 This way is applied in the majority of Decrees on sanctioning administrative violations in the fields of state management.
Because in the case of “administrative violations with extenuating circumstances”, the competent person may also choose the form of a fine instead of warning, according to Clause 4 Article 23 of the Law on Handling of Administrative Violations in 2012: “The specific fine level for an administrative violation is the average of the fine bracket prescribed for such violation; if extenuating circumstances are involved, the fine level may be reduced but not lower than the minimum level of the fine bracket; if aggravating circumstances are involved, the fine level may be increased but must not exceed the maximum fine level of the fine bracket.”

For example: Clause 1, Article 7 of Decree No 33/2017/ND-CP on sanctioning administrative violations in the field of water and mineral resources stipulates: “A warning or a fine ranging from VND 100,000 and VND 500,000 for acts of exploring and exploiting underground water in cases where it is required to register without registering as prescribed.” Based on this regulation, on August 5, 2019, Chief Inspector of Department of Natural Resources and Environment of Soc Trang Province issued Decision No 34/QD-XPVPHC to sanction administrative violations in the field of water and mineral resources for the Management Board of construction investment projects of Cu Lao Dung District due to the implementation of such acts “Exploiting underground water in cases subject to registration without registration as prescribed.” Owing to administrative violations of the Management Board of construction investment projects of Cu Lao Dung District, the extenuating circumstance was applied: “Voluntarily declared and sincerely apologized as stipulated in Clause 2 Article 9 of the Law on Handling of Administrative Violations 2012” so the competent person applied warning. Compared with the condition of warning to the organization, this case can be seen, Chief Inspector of Department of Natural Resources and Environment of Soc Trang Province has applied the sanctions in accordance with the law.

However, suppose this case Chief Inspector Department of Natural Resources and Environment of Soc Trang Province did not sanction warning, but applied a fine towards Management Board of construction investment project of Cu Lao Dung District, what would the consequences be? According to Clause 4 Article 23 of the
Law on Handling Administrative Violations 2012, Chief Inspector of the Department of Natural Resources and Environment of Soc Trang province may also decide to apply the form of fines for administrative violations of Management Board of construction investment project of Cu Lao Dung District with a fine of from 100,000 to less than VND 250,000 due to “administrative violations with extenuating circumstances.”

The question is, based on what criteria will the authority decide to apply warning or fine? Obviously, in this case, the law on sanctioning administrative violations has absolutely no answer and the imposition of warning or fine depends entirely on the will of the person with sanctioning authority on an “administrative discretion” basis.16 Thereby giving rise to the same issue of administrative violations of the same nature, degree and circumstances, but from time to time subject to warning, or occasionally subject to fine, while the legal consequences of these two sanctions are absolutely different. Warning is meant to be educational, with the purpose of reminding violators to respect and abide by the law provisions on state management. Meanwhile, the main purpose of the fine is to deprive the violating material owners of direct material benefits, causing them to suffer property damage.

One of the important principles of sanctioning administrative violations is “ensuring fairness.”17 The content of this principle requires that administrative sanctioning activities must ensure that violators are handled in accordance with the nature and seriousness of their violations, there are grounds for aggravating, extenuating circumstances, no act of injustice or wrong, but ensuring strict handling, administrative violations of the same nature, severity, aggravating, extenuating circumstances must be sanctioned in the same manner.18 Nevertheless, with the above mentioned inadequacies, in many cases,

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16 Cao Vu Minh, On Discretion in Activities of Administrative Agencies, 11 State and Law Review 10–21 (2013).
17 Article 3 (1.b) of the Law on Handling Administrative Violations 2012 prescribes: “The sanction of administrative violations must be conducted fast, with publicity, objective and proper competence, ensure fairness, in accordance to law provisions”.
18 Scientific commentary on the Law on Handling of Administrative Violations in 2012, at 135 (Nguyen Canh Hop ed., Hong Duc Publisher, 2017).
the content of this important sanctioning principle is not guaranteed to be implemented in practice.

*The second way is that the regulation of administrative violations only applied one form of sanction is warning.* For example, Clause 1 Article 10 of Decree No 142/2017/ND-CP on sanctioning administrative violations in the field of maritime regulation stipulates: “*Warning shall be imposed for failure to comply with instructions given by a competent authority or officer when entering or leaving the port land area or boarding the ship.*”

According to the author’s survey as of June 30, 2020, the Vietnamese legal system currently has about 26 Government’s Decrees on sanctioning administrative violations, provides that administrative violations are subject to a single sanction “warning” for individuals aged full 16 years or older and organizations that commit administrative violations.\(^{19}\) Therefore, when sanctioning these acts, the competent

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\(^{19}\) Decree No 98/2013/ND-CP sanctioning administrative violations in the field of insurance business and lottery business (amended and supplemented by Decree No 48/2018/ND-CP); Decree No 108/2013/ND-CP sanctioning administrative violations in the field of securities and securities market (amended and supplemented by Decree No 145/2016/ND-CP); Decree No 109/2013/ND-CP sanctioning administrative violations in the field of pricing, fee management, and invoicing (amended and supplemented by Decree No 49/2016/ND-CP); Decree No 110/2013/ND-CP sanctioning administrative violations in the field of judicial assistance, judicial administration, marriage and family, civil judgment enforcement, enterprise and cooperative bankruptcy (amended and supplemented by Decree No 67/2015/ND-CP); Decree No 120/2013/ND-CP sanctioning administrative violations in the field of defense and cipher; Decree No 129/2013/ND-CP sanctioning administrative violations in the field of tax; Decree No 134/2013/ND-CP sanctioning administrative violations in the field of electricity, safety of hydroelectric dam, thrifty and effective use of energy; Decree No 138/2013/ND-CP sanctioning administrative violations in the field of education; Decree No 162/2013/ND-CP sanctioning administrative violations within territorial waters, islands and the continental shelf of the socialist republic of Vietnam (amended and supplemented by Decree No 23/2017/ND-CP); Decree No 176/2013/ND-CP sanctioning administrative violations in the field of health; Decree No 95/2016/ND-CP sanctioning administrative violations in the field of statistics; Decree No 155/2016/ND-CP sanctioning administrative violations in the field of environmental protection; Decree No 104/2017/ND-CP sanctioning administrative violations in the field of disaster preparedness, operation and protection of hydraulic structures and flood control systems (amended and supplemented by Decree No 65/2019/ND-CP); Decree No 119/2017/ND-CP sanctioning administrative violations in the field of standards, measurement and quality of goods; Decree No 142/2017/ND-CP
person can only apply the main sanctioning form of warning and not any other sanctions.

In this way, in order to apply warning, the competent person must determine whether the actual administrative violation involve extenuating circumstances or not. In case there are extenuating circumstances, the sanction will be extremely simple, the competent person will issue a sanctioning decision for the subject of administrative violations to apply warning. In contrast, if the administrative violations do not have extenuating circumstances, the person with sanctioning competence will face a real dilemma. If the competent person applies warning to the administrative violation without extenuating circumstances, sanctioning decisions will be illegal due to ineligibility to apply. On the contrary, if the violating subject does not have extenuating circumstances and thus cannot be sanctioned, it will lead to the omission of the administrative violations. This is against the rule “All administrative violations must be detected and stopped in time and handled strictly and clearly, all consequences caused by administrative violations must be overcome strictly according to law provisions.” A violation of both cases makes the person with sanctioning competence bear legal responsibility related to the exercise of his sanctioning competence. According to the provisions of Decree No 19/2020/ND-CP stipulating the examination sanctioning administrative violations in the field of maritime; Decree No 41/2018/ND-CP sanctioning administrative violations in the field of accounting and independent audit; Decree No 55/2018/ND-CP sanctioning administrative violations in the field of fertilizer; Decree No 64/2018/ND-CP sanctioning administrative violations in the field of livestock breeds, animal feeds and aqua feeds; Decree No 45/2019/ND-CP sanctioning administrative violations in the field of tourism; Decree No 46/2019/ND-CP sanctioning administrative violations in the field of sports; Decree No 51/2019/ND-CP sanctioning administrative violations in the field of scientific and technological activities, and technology transfer; Decree No 63/2019/ND-CP sanctioning administrative violations in the field of management and use of public property, thrift practice and wastefulness combat, national reserve and state treasury; Decree No 75/2019/ND-CP sanctioning administrative violations in the field of competition; Decree No 88/2019/ND-CP sanctioning administrative violations in the field of monetary and bank; Decree No 28/2020/ND-CP sanctioning administrative violations in the field of labor, social insurance and sending Vietnamese workers abroad under contracts; Decree No 36/2020/ND-CP sanctioning administrative violations in the field of water resources and minerals.

Law on Handling of Administrative Violations in 2012, Art. 3 (1.a).
and handling of discipline in the enforcement of the law on handling of administrative violations, if a person with sanctioning competence “Does not sanction an administrative violation against the violator according to law provisions” or “Applying the sanctioning forms, levels, and remedies improperly and inadequately with administrative violations”, he will be disciplined. The above shortcomings have made the competent people very confused when sanctioning, resulting in many mistakes arising in the process of law application. Specifically:

Firstly, the competent people apply warning, although administrative violations are sanctioned without extenuating circumstances.

Clause 1 Article 27 of Decree No 110/2013/ND-CP (amended and supplemented by Decree No 67/2015/ND-CP) prescribing sanctions against administrative violations in the field of judicial supplementation, judicial administration, marriage and family, civil judgment execution, bankruptcy of enterprises or cooperatives stipulates that warning shall be imposed on the person responsible for birth registration of children but failing to register it within the prescribed time limit.

Applying this regulation, on July 9, 2019, Chairman of People’s Committee of Hiep Binh Chanh Ward, Thu Duc District, Ho Chi Minh City, Vietnam issued Decision No 498/QD-XPVPHC to sanction administrative violations against Mr. Nguyen Gia Vu (born in 1987) due to the fact that he did not register the birth for his son (Nguyễn Gia Minh Đức, born on February 22, 2019) within the prescribed time limit with the sanction form of warning. Nonetheless, it is worth mentioning that in the content of the decision to sanction, the People’s Committee Chairman Hiep Binh Chanh Ward did not apply any extenuating circumstances to Mr. Nguyen Gia Vu. Hence, the application of warning

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21 Decree No 19/2020/ND-CP, Art. 25 (1.a, 1.b, 2.a).
22 Article 15 (1) of the Law on Civil Status in 2014 prescribes: “Within 60 days after the birth of their child, the father or mother shall register the child’s birth; if the parents are unable to register their child’s birth, the grandfather or grandmother or another relative or the individual or organization that is nurturing the child shall register his/her birth”.

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for this person did not fully meet the conditions to apply this form of sanction in accordance with the Law on Handling of Administrative Violations in 2012. On the contrary, if the Chairman of the People’s Committee of Hiep Binh Chanh Ward had not conducted sanctions, it would have led to the omission in the violation.

**Secondly, competence persons “arbitrarily” apply extenuating circumstances that are not prescribed by law to apply warning.**

Analyzing the regulations in Article 9 of the Law on Handling Administrative Violations 2012 to demonstrate that the extenuating circumstances are not in the “closed-in” list but can be expanded and added because along with the extenuating circumstances issued by the National Assembly which are listed in detail from Clause 1 to Clause 7, the Law is also regulated in an open manner in Clause 8 when allowing the Government to issue other extenuating circumstances. The expansion and addition depend on the decision of the Government. This regulation is necessary to create advantages for the authorities for actively making and choosing suitable extenuating circumstances with the variety of administrative violations in each different domain which aims to bring benefits to violators.23 However, it should be noted that the person with sanctioning competence can only apply extenuating circumstances other than those specified in Article 9 of the Law on Handling Administrative Violations 2012 if the Decree prescribing the sanctioning of administrative violations in that domain contains new additional extenuating circumstances. On the contrary, they will not have the right to arbitrarily stipulate additional extenuating circumstances not yet stipulated by the Government to apply when conducting sanctions.

For acts of delayed submission of tax declaration dossiers, Clause 1, Article 7 of Decree No 129/2013/ND-CP of the Government stipulating the sanctioning of tax-related administrative violations and forcible implementation of tax administrative decisions prescribes that “acts of

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23 Khanh N.N. Extenuating Circumstances Administrative Liability in the Law on Handling of Administrative Violations of Vietnam. Kutafin University Law Review. 2020;7(1):49. https://doi.org/10.17803/2313-5395.2020.1.13.045-066.
delayed submission of tax declaration dossiers between 1 and 5 days later with extenuating circumstances” shall be imposed with warning.

On May 10, 2017, Director of Hanoi City Tax Department issued Decision No 28986/QD-CT-KK&KTT to sanction administrative violations against SSI Fund Management Limited Liability Company for “Late filing of personal income tax declaration, tax period April 2015 (2 days late submission)” with warning. In the content of this sanctioning decision, the competent person applied the extenuating circumstance “Organizations commit the administrative violation for the first time owing to the network system error that they could not submit the tax declaration.” Compared with the extenuating circumstances specified in Article 9 of the Law on Handling Administrative Violations 2012, there is no such extenuating circumstance. At the same time, when studying the entire contents of Decree No 129/2013/ND-CP, the author does not find that this document stipulates any additional extenuating circumstances other than those specified in the Law on Handling of Administrative Violations in 2012. Thus, it is possible to conclude in this case to fully satisfy the conditions for application of warning against administrative violations of SSI Fund Management Limited Liability Company, Director of Hanoi City Tax Department “arbitrarily” applied new extenuating circumstances “Organizations commit the administrative violation for the first time owing to the network system error that they could not submit the tax declaration” although this circumstance has not been prescribed by law. Therefore, the application of warning in this case also does not meet the provisions of the Law on Handling Administrative Violations 2012, so it has no legal value.

Through the analysis above, it can be seen that the second condition for application of warning, which is “administrative violations with extenuating circumstances”, is causing a lot of legal obstacles. It is thought that the Law on Handling Administrative Violations 2012 needs to reassess the application of this condition in warning, thereby removing the legal difficulties as well as creating favorable conditions for the application of the law by the competent sanctioning subjects.
3.2. The relationship between warning and the sanctioning form of confiscation of material evidences and means used to commit administrative violations when sanctioning minors aged between full 14 and under 16

To ensure that administrative sanctioning activities comply with the legality and at the same time to achieve the objectives and requirements of state management activities, the Law on Handling Administrative Violations 2012 regulates the principles for sanctioning administrative violations in Article 3, including: “The sanctioning of administrative violations must be based on the nature, seriousness and consequences of the violations, the violating subjects and the extenuating and aggravating circumstances.” This principle requires that when sanctioning administrative violations, the competent person must have special attention paid to the violating subject, which is a sign of the subject in the elements constituting the administrative violation. Accordingly, the subjects sanctioned for administrative violations must be those with administrative liability capacity. In order to differentiate administrative responsibilities, competent people will base on the specific characteristics of violators to apply appropriate measures of administrative liability. From this perspective, the Law on Handling Administrative Violations 2012 designed administrative liability measures (including sanctions, remedial measures) for two groups of subjects: Group 1: violators are adult individuals (aged full 18 years or older) and organizations; Group 2: violators are juvenile individuals (from full 14 to under 18 years).

For juvenile violators, the Law on Handling Administrative Violations 2012 stipulates three types of administrative sanctions that can be applied to these subjects: i. Warning; ii. Fine; iii. Confiscating material evidences, means of administrative violation used to commit administrative violations. In terms of applicable value, warning and fines can only be applied as a main sanctioning form; while confiscating material evidences, means of administrative violation used to commit administrative violations may be applied as a main sanctioning form or an additional sanctioning form. Particularly for minors who commit administrative violations are those from full 14 years old to

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24 Law on the Handling Administrative Violations 2012, Art. 3 (1.c).
25 Law on Handling Administrative Violations 2012, Art 135 (1).
under 16 years old, the Law on Handling Administrative Violations 2012 stipulates that only two sanctions are applied that warning and confiscation of material evidences, means of administrative violations without applying the form of fines. This is a reasonable regulation and in accordance with the provisions in the working age specified in the Labor Code. Persons from full 14 years old to under 16 years old — meaning children, cannot participate in labor relations or wage work.

Logically, warning and confiscation of material evidences and means of administrative violations can all be applied as a main sanctioning form. However, the Law on Handling Administrative Violations 2012 stipulates that all administrative violations committed by persons aged between full 14 and under 16 subject to warning (Article 22) should have indirectly removed the possibility of applying the sanctioning form of confiscation of material evidences and means of administrative violations as a main sanctioning form. In other words, warning is always applied as the main sanction for all administrative violations committed by persons aged between full 14 and under 16, and sanction for confiscating material evidences and means of administrative violations, if applicable, it can only be applied as an additional sanctioning form, not as a main sanctioning form.

Through the above analysis, it can be seen that the provisions of the Law on Handling of Administrative Violations in 2012 have narrowed the scope and conditions to apply the sanction of confiscation of material evidences and means of administrative violations. Consequently, the above provisions may be taken advantage of the illegal purpose of employing persons aged full 14 to under 16 to commit administrative violations. When discovered, this subject will only be given a warning and cannot be imposed with the confiscation of material evidences and means of administrative violations if the law does not provide for the application of this form of sanction as an additional sanctioning form.

26 Art. 134 (3) of the Law on Handling Administrative Violations 2012 stipulates: “In case of persons aged between full 14 years old and under 16 years old who commit administrative violations, not applying form of fines”.

27 Cao Vu Minh, Shortcoming in the Sanctions to Juveniles for Administrative Violations, 5 Legislative Studies 41 (2019).

28 Cao Vu Minh, Shortcoming in the Sanctions to Juveniles for Administrative Violations, 5 Legislative Studies 51 (2019).
3.3. Legislative techniques in the Decrees on sanctioning administrative violations in warning

The first, the contents of the Decrees on sanctioning administrative violations do not have unity in warning.

As stated, the Law on Handling Administrative Violations 2012 is a general document on sanctioning for administrative violations, while the regulations for administrative violations, sanctioning forms, levels, and remedial measures for each act of administrative violation; sanctioning competence, specific fine levels for each title and competence to make records of administrative violations in each state management domain will be decided by the Government through the promulgation of Decrees on sanctioning administrative violations. When sanctioning a specific administrative violation, the competent person shall base on the Decree prescribing the sanctioning of administrative violations in that domain to conduct sanctions.

Generally, the Government develops a Decree on penalties for administrative violations with a 4-part structure. Part 1 provides general regulations (including the scope of adjustment, subjects of application, explanation of words, sanctioning forms, remedial measures, statute of limitations for sanction, etc); Part 2 stipulates violations, the form of sanctions and remedies for specific violations (which can be designed into one or more chapters); Part 3 provides the authority to sanction administrative violations in that field; Part 4 provides the provisions for implementation. In order to create a solid legal basis for sanctioning, the contents of the Decree on sanctioning of administrative violations must ensure the uniformity to implement the principles of formulating and promulgating legal documents according to the provisions of the 2015 Law on Promulgation of Legal Documents as follows: “Ensuring the constitutionality, legality and uniformity of legal documents in the legal system.”\(^{29}\) The uniformity of the legal system requires the elimination of conflicts, duplicates or overlaps within the system itself, in each law branch, each legal institution, and among legal norms. If the legal system is inconsistent, there are inadequacies and contradictions

\(^{29}\) Law on Promulgation of legislative documents in 2015, Art. 5 (1).
between legal norms, it cannot create comprehensive, uniformed and effective legal adjustments.\(^3\)

Surveying the Decrees on sanctioning administrative violations in the field of state management which stipulates warning, the author has discovered a number of cases where the regulations are not uniform, which reduces the regulatory effect of the law.

In the field of customs, according to Decree No 127/2013/ND-CP, warning is applied in two cases. The first case prescribed in Clause 1 Article 6 of this Decree is as follows: “A warning or a fine of between VND 500,000 and 1,000,000 for one of the following acts: a) Submitting the customs dossier behind schedule; b) Submitting the documents in the customs dossier, the submission of which may be delayed, behind schedule.” The second case prescribed in Clause 1 Article 10 is as follows: “A warning or a fine of between VND 500,000 and 2,000,000 for acts of arbitrarily erasing, editing documents in registered customs dossiers without affecting the payable tax amount or not affecting the commodity policies.”

Subsequently, on May 26, 2016, the Government issued Decree No 45/2016/ND-CP to amend and supplement a number of articles of Decree No 127/2013/ND-CP. One of the key points of the Decree No 45/2016/ND-CP is the abolition of the application of warning of these above cases in Decree No 127/2013/ND-CP and the only major form of sanction for such violations is a fine.\(^3\)

Therefore, with the above amendments and supplements, all administrative violations in the field of customs will no longer apply warning. However, inadequacies arise in spite of the exclusion of the application of warning for specific administrative violations in the field of customs, but the Decree No 45/2016/ND-CP amended and supplemented with other regulations that mentioned warning. Specifically, for the general provisions on sanctions applied in the customs field in Clause 1 Article 4 of Decree No 127/2013/ND-CP amended by Decree No 45/2016/ND-CP stipulates: “For each administrative violation in the field of 

\(^{30}\) Cao Vu Minh, The consistency of the Law on Inspection in 2010 with other legal documents in the Vietnamese legal system, The conference record on summarizing 6 years enforcement Law on Inspector 57 (2017).

\(^{31}\) Decree No 45/2016/ND-CP, Art. 1 (3, 7).
customs, organizations and individuals subject to one of the main sanctioning forms are warning or fine.”

Regarding the sanctioning competence in the field of customs, the Decree No 45/2016/ND-CP still retains the provisions on the competence for applying warning of the titles specified in Decree No 127/2013/ND-CP. On the other hand, it has added sanctioning competence to apply warning to new titles such as the Border Guards and the Coast Guard. Consequences of the amendment and supplement of Decree No 45/2016/ND-CP are the general provisions that stipulate sanctioning forms applying warning (Part 1) and the sanctioning competence (Part 3) applying warning, but in the specific administrative violations (Part 2), there are no violations sanctioned with warning, thereby creating internal contradictions in this Decree.

In the forestry sector, regulations on sanctioning administrative violations in this field are applied according to Decree No 35/2019/ND-CP issued by the Government on April 25, 2019. In particular, the general provisions on the sanctioning form in the forestry in Clause 1 Article 4 stipulating the application in warning: “For every administrative violation in the field of forestry, organizations and individuals must be subject to one of the main sanctioning forms, which are warning or fine.” Articles 26 to 33 of Decree No 35/2019/ND-CP stipulating the sanctioning titles in the forestry sector also specifies these entities the authority to apply warning. However, researching specific administrative violations in the field of forestry sanctioned from Article 7 to Article 24, the author has not found any violations applied warning. Thus, Decree No 35/2019/ND-CP continues to “follow the same path of failure” of Decree No 127/2013/ND-CP (amended and supplemented by Decree No 45/2016/ND-CP) since the provisions of warning in this Decree conflict together.

Through analysis, it can be seen that some Decrees do not have consensus among the provisions when applying the sanctioning form of warning in the same document. From the author’s perspective, the Government needs to overcome the limitations in the legislative

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32 Decree No 45/2016/ND-CP, Art. 1 (1).
33 Decree No 45/2016/ND-CP, Art. 1 (15, 16).
The form of warning sanction in the law on handling... 

The technique in warning in the Decrees stipulated sanctioning administrative violations in the field of state management in order to create uniformity in the contents of legal documents.

The second, a number of Decrees of the Government that stipulate the application in warning with other sanctions have not been logical about the nature and severity of violations.

One of the important principles of sanctioning administrative violations is that “The sanctioning of administrative violations must be based on the nature, seriousness and consequences of the violations, the violating subjects.” Therefore, Decree No 81/2013/ND-CP (amended and supplemented by Decree No 97/2017/ND-CP) stipulates that the decision on administrative sanctions and rates of fines for each administrative violation must be based on: i. The nature and the severity of the infringement of administrative management order of the violations; ii. The income and living standards of the people in each period; iii. The educational meaning, reasonability, and feasibility of the sanctions. This requirement is very significant in differentiating the level of administrative responsibility and ensuring fairness in sanctioning administrative violations.

The provision of sanctioning forms suitable to the nature and degree of danger of violation acts has also an important role in the struggle and prevention of administrative violations. However, studying how to stipulate sanctions in the Decrees on administrative sanctions in the fields of state management of the Government, the author found a number of cases which warning shall be applied with other sanctions for the same administrative violation, while these sanctions apply to administrative violations with different nature and level of danger, leading to inconsistencies in the application of sanctions.

For example, Decree No 36/2020/ND-CP prescribes a household business who acts as “developing a mine status quo map or cross-section drawing of the licensed mining area which contains inadequate or incorrect information about the mining situation” shall be imposed

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34 Law on Handling of Administrative Violations in 2012, Art. 3 (1.c).
35 Decree No 81/2013/ND-CP (amended and supplemented by Decree No 97/2017/ND-CP), Art. 2 (2).
warning (the main sanctioning form) and the form of suspending the mineral exploration for between 2 and 4 months (additional sanctioning forms).36

Article 22 of the Law on Handling Administrative Violations 2012 stipulates that warning shall only apply to “non-serious administrative violations.” Meanwhile, Article 25 of this Law stipulates that the form of suspending the mineral exploration shall apply to “serious administrative violations.” Therefore, the question is that once it is determined that it is a “non-serious” administrative violation to apply warning as a main sanction, would such an act be a “serious” violation and require additional sanctions to suspend the mineral exploration? From the author’s point of view, the Government has had inaccuracies in assessing the nature and severity of the society’s danger of administrative violations, thus leading to the unreasonable way of designing sanctions.

The Law on Handling Administrative Violations 2012 and its implementing documents does not provide a basis for determining the nature and severity of violations. This is an unreasonable thing and needs to be supplemented and improved in the future. According to the author, lawmakers need specific guidance on what is “non-serious administrative violations” and “serious administrative violations”. On that basis, Government will design appropriate sanctions, avoiding the situation of developing sanctions that are intrinsically contradictory to the nature and severity of violations.

3.4. The competence to issue warning is invalidated by the competence to apply additional sanctioning forms and remedial measures

The Law on Handling Administrative Violations 2012 stipulates: “The administrative sanctions includes application of sanction forms, remedial measures with respect to individuals, organizations committing acts of administrative violations, according to the provisions of law on administrative sanctions which are implemented by the

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36 Decree No 36/2020/ND-CP, Art. 40 (4.a, 9).
competent persons.” This means when sanctioning an administrative violation, the person who sanctions must have the competence to apply all sanctioning forms and remedial measures to this violation. If this person lacks one of the two kinds of competence, they will not have sanctioning competence. Regarding regulations on handling administrative violations in the Decrees issued by the government, there are many cases where the persons with sanctioning competence cannot issue warning because of lacking the competence to apply additional sanctioning forms and remedial measures.

**Firstly, the competence to issue warning is invalidated by the competence to apply additional sanctioning forms.**

According to Article 10 (1.a) of Decree No 185/2013/ND-CP (amended and supplemented by Decree No 124/2015/ND-CP), those who “sell prohibited goods valued under 1,000,000 dong” will be issued a warning or fined from 500,000 dong to 1,000,000 dong; the material evidence may also be confiscated. Regarding the sanctioning competence in this field, although some persons have the competence to issue warning (for example, market controllers, policemen, border-guard soldiers, marine policemen who are on duty, inspectors and persons assigned to perform specialized inspection tasks who are on duty), they do not possess the competence to apply the additional sanctioning form of confiscating the material evidence of administrative violations. As a result, they cannot sanction administrative violations detected by them and documents related to these violations must be transferred to persons with higher competence. This slows down the process of sanctioning administrative violations. The principle according to which “Administrative violations must be sanctioned swiftly” is therefore sometimes violated.

**Secondly, the competence to issue warning is invalidated by the competence to apply remedial measures.**

According to Decree No 138/2013/ND-CP, teachers who “teach 1 to 4 periods less than what is required in the curriculum” will be issued

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37 Law on Handling of Administrative Violations in 2012, Art. 2 (2).
warning. The remedial measure of “teaching the periods that have not been taught” can also be applied.\textsuperscript{38}

Compared to Article 28 (1) of Decree No 138/2013/ND-CP relating to the competence sanction in the field of education, Chairmen of the commune-level People’s Committees have the competence to issue warning, fine up to 5.000.000 dong for each violation and confiscate the material evidence and means used in the commission of administrative violations. According to this article, regarding the violation of “teach 1 to 4 periods less than what is required in the curriculum”, Chairmen of the commune-level People’s Committees only have the competence to issue warning and do not have the competence to apply the remedial measure of “teaching the periods that have not been taught.” This means that Chairmen of the commune-level People’s Committees cannot sanction this simple violation and have to transfer related documents to Chairpersons of district People’s Committees who have the competence to apply the remedial measure of “teaching the periods that have not been taught.”\textsuperscript{39} Therefore, in this case, the regulation on remedial measures indirectly invalidates the sanctioning competence of Chairmen of the commune-level People’s Committees. This prolongs the sanctioning process and makes it less effective.

\section*{IV. Conclusion}

\textit{The first}, when modifying the Law on Handling of Administrative Violations in 2012, lawmakers should exclude the criterion of “administrative violations with extenuating circumstances” when applying warning because of its drawbacks as analyzed above. Moreover, Decrees on sanctioning administrative violations in the fields of state management issued by the Government should not stipulate that the sanctioning forms of issuing warning and fine can be applied simultaneously for one violation. This is due to the fact that the criteria for issuing warning instead of imposing fines and vice versa are not clear enough for persons with sanctioning competence to apply the law correctly. Specifically, if lawmakers consider an administrative

\textsuperscript{38} Decree No 138/2013/ND-CP, Art. 11 (2.a, 9.a).

\textsuperscript{39} Decree No 138/2013/ND-CP, Art. 28 (2).
violation to be not serious and therefore it is unnecessary to fine on
the violator, the sanctioning form should only be issuing warning,
not imposing a fine. This not only makes the process of sanctioning
administrative violations with extenuating circumstances easier, but
also is in accordance with the regulation “for simple violations that
are not serious, the sanctioning form shall be issuing warning.”\textsuperscript{40} In
contrast, if lawmakers suppose that it is necessary to impose a fine on
violators to deter them, competent persons should not be allowed to
apply warning.

\textit{The second}, to establish the uniformity in the understanding and
application of the law, the Law on Handling Administrative Violations
2012 needs to have more specific regulations on the sanctioning
forms imposed on persons from 14 to under 16 years old committing
administrative violations. Therefore, the regulation should be added to
Article 135 (1) of the Law on Handling Administrative Violations 2012
as follows:

\begin{quote}
“The sanctioning forms for persons from 14 to under 16 years old
include warning, confiscation of the material evidence and means used
in the commission of administrative violations. Warning is always
the main sanctioning form; the confiscation of material evidence and
means used in the commission of administrative violations can be
applied as an additional sanctioning form.”
\end{quote}

\textit{The third}, regarding law-making techniques, in some decrees,
regulations regarding warning are contradictory. Therefore, concerning
this form of sanctioning, the Government needs to fix the errors
regarding law-making techniques in decrees to achieve uniformity in
different legal normative documents.

\textit{The fourth}, when building regulations for administrative violations,
sanctioning forms, sanctioning levels and remedial measures in decrees on
sanctioning administrative violations in the fields of state management,
the following factors need to be taken into account: Administrative
management order, the ability to educate and deter the violator, the
reasonableness and feasibility of the forms and levels of sanctioning.
This can help maintain the good governance that has been ruined by

\textsuperscript{40} Decree No 81/2013/ND-CP (amended and supplemented by Decree
No 97/2017/ND-CP), Art. 2 (2.a).
administrative violations. Therefore, to combat, deter, prevent and sanction administrative violations, the Law on Handling Administrative Violations 2012 and the Decree on sanctioning administrative violations in all domains need to be uniform regarding the competence to issue warning, additional sanctioning forms and remedial measures. This can help persons with sanctioning competence sanction violations swiftly, promptly, and within their competence and the law.

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