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Enhancing understanding about civil liability to the inland waterway transport vehicles owners on Kien Giang Province

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ABSTRACT

The paper research on the status of observance of legal regulations of owners of waterway traffic in Kien Giang province through field surveys as well as inquiries on results of inspection and sanction of waterway owners of the Marine Department. On the basis, the paper proposes measures to raise civil liability for waterway owners in the province. The article explores the reality of observing the legal regulations of waterway owners in Kien Giang province through actual surveys as well as finding out the results of the inspection and sanctioning of waterway vehicle owners of the water police room. On that basis, propose solutions to improve civil liability for waterway vehicle owners in the province.

Keywords— Civil liability, Inland, Waterway Transport, Vehicles, Owners, Kien Giang Province

1. INTRODUCTION

Kien Giang is a coastal province, located in the Mekong Delta, located southwest of Vietnam. Kien Giang covers an area of more than 6,348.53 km², with 15 districts, towns and cities with 145 communes, wards and towns; the total population is over 1.8 million. The economy of the province is diversified: forestry, agriculture, aquaculture and fishing, industry and tourism services, including 02 island districts; the border of Cambodia's armor is 56.8 km long.

Kien Giang province has a quite diverse and complex transportation system, including roads, inland waterways, seaways and airways. The whole province has 292km of national roads, 727km of provincial roads, 57 km of coastal corridors, 636km of district roads, 638km of urban roads and 7,084km of rural roads. The province has a relatively fast development traffic density. Kien Giang currently manages 902,374 motorcycles, motorbikes and 21,381 cars with 4,649 vehicles of all kinds.

The inland waterway system is spread, there are many routes to the sea. The coast is 200 km long, the sea area is 63,290 km², including 145 islands, large and small, with historical water adjacent to Cambodia; the whole province has 88 inland waterway routes, with a total length of 679.8 km (of which: 22 routes under central management, 53 routes under local management and 13 routes from shore to island); 276 cargo terminals, 18 fixed-route passenger wharves, 01 passenger port, 04 cargo ports. According to the statistics of the functional departments of the whole Kien Giang province, there are 63,000 waterway vehicles, of which 122 passenger vehicles, the rest are cargo and household vehicles; there are also over 12,000 fishing boats of fishermen. As a neighboring province of An Giang, Can Tho, Hau Giang, Ca Mau and Bac Lieu provinces, Kien Giang receives a large number of vehicles from the provinces and cities in the region every year. On the other hand, Phu Quoc island district is a key tourist area, which is being strongly invested, so there is a great demand for goods and materials as well as the number of tourists visiting every year.

As for inland waterway transport in the province, in recent years, with the development on social life fields of the province in general, in which the number of tourists has increased rapidly, more and more waterway transport vehicles have been taken, operate quickly increasing the number of vehicle of transport on key waterways on the river, such as: Rach Gia - Ha Tien, Rach Gia - Long Xuyen, Rach Soi - Hau Giang, Ong Hien - Ta Nien ; waterway routes to islands such as: Giap Gia - Thoai Son, Nam Du and vice versa, Ha Tien - Phuc Quoc and vice versa. It is estimated that on average, there are about 6,000 vehicles passing through these important waterway routes every day. For river transport routes, the main vehicles of transporting construction materials, goods such as bricks, stone, sand, cement...; with regard to traffic routes to the islands, it will mainly be tourists; in addition, there are many vehicle of transporting seafood to the shore and transporting construction materials to the island ... Most inland waterway transport owners abide by the traffic laws as well as show their understanding to civil responsibilities when

engaging in this area of business. However, not all water vehicle owners strictly abide by the traffic laws, as well as knowing all their civil responsibilities. Through the actual survey showed that many boats still overloaded goods, when violating, were handled by many vehicle owners with little understanding of civil liability when participating in traffic as well as their fields of business. Therefore, the situation of waterway traffic safety and order in the province is becoming increasingly complicated.

2. ACTUAL SITUATION OF LAW OBSERVANCE AND UNDERSTANDING OF CIVIL LIABILITY OF INLAND WATERWAY TRANSPORT VEHICLES OWNERS

2.1. What is the civil liability of inland waterway vehicles owners?

What is a people's responsibility?

A civil obligation is a legal relationship between obligee and has powers, in which the obligor is obliged to perform the obligation by law. To this point, Clause 1, Article 351 of the Civil Code 2015 stipulates: "The obligor fails to perform or performs improperly the obligations, so he has civil liability to the parties with interests". Violators are obliged to incur adverse consequences as civil liability. If the parties fulfill their obligations fully and legally, the arising legal relationship is the obligation relationship, and in case the obligation is violated, the relationship arises then the liability relationship.

With the above explanation, it can be understood that civil liability is a detrimental legal consequence, applied to the subject violating civil law to force this subject to repair the damage caused.

What is the owner of inland waterway transport vehicles?

According to Clause 7, Article 3 of the 2004 Inland Waterway Law (23/2004/QH11): "inland waterway vehicle are ships, boats and other floating structures, motorized or non-motorized, specializing in inland waterway operations". Therefore, owners of waterway vehicles are those who own and have the right to decide on the above-mentioned vehicle.

Responsibilities of owners of inland waterway transport vehicles:

Responsibilities of owners of inland waterway vehicles specified in Article 5 of Circular 47/2015/TT-BGTVT stipulating the scope of responsibilities of crew members, vehicle drivers and minimum safe manning levels on inland waterway vehicle is issued by the Minister of Transport and this is amended by Clause 2, Article 1 of Circular 04/2017/TT-BGTVT as follows:

- Preparing a crew member directory book according to the form provided in Appendix I to this Circular, equipped with a logbook of vehicle of transport of vehicles with a total tonnage of 300 tons or more or a vehicle of transport guests with a capacity of 50 guests or more.
- Arranging enough numbers and standards of crew members working on the vehicles, suitable to the number of working shifts in a day.
- Apart from crew members prescribed in the minimum safe manning limit in Article 19 of this Circular, in case of necessity, vehicle owners may arrange additional crew members or other titles such as: nurses, telegraph, divers...and staff to ensure job requirements.
- Regulating the scope of responsibilities of other titles working on vehicles not included in the minimum safe payroll specified in this Circular.
- Ensuring occupational safety and labor hygiene for crew members and other titles working on the transport vehicles.

2.2. Actual situation of law observance by owners of waterway vehicles

Last time, thanks to synchronous deployment of propagation and dissemination of the Law on inland waterway, with the inspection and handling of violations, the situation of traffic order and safety in the province has positive changes. However, violations in the field of waterway transport still occur quite a lot, especially the situation of overloaded vehicle of transport, potentially risks of water traffic accidents, especially in the stormy time.

Although the Ministry of Transport as well as Kien Giang province has issued many documents and official letters stipulating that waterway transport vehicle must reduce the load during the flood and storm season, but in reality, that regulation is almost has not been taken seriously by vehicle owners. Therefore, in 2017 and the first 9 months of 2018 on the province's important waterways, the vehicles of transport violating regulations on water transport safety continues. This is also one of the main and direct causes of many waterway traffic accidents.

"Only from November 2017 to November 2018, the whole province had 04 inland waterway traffic accidents and 01 marine accident, killing 06 people and estimated property damage. 468,400,000 VND. Compared to 2017, the number of traffic accidents decreased by 02 (June 4) = 50%, the number of deaths increased by 02 (April 6) = 50%. Property damage increased VND 168 million VND (468/300 million VND)" (The Kien Giang province waterway police department, 2018).

Comparison of the number of accidents, deaths and property damage in 3 years (from November 15 of this year to November 15 of the following year) (table 1) shows the number of accidents reduction, however, the number of deaths and damage increased again.

Table 1: Violation of inland waterway transport in Kien Giang province for 03 years

Mumerical order	Content	2016	2017	2018	Compare
1	Number of accidents	05	06	04	Reduction
2	Number of deaths	03	04	06	Increase
3	Property damage (million VND)	200.000.000	300.000.000	468.000.000	Increase

As for the vehicles of transportation on the river routes, mainly barges carrying sand and stone, boats transporting agricultural products from other provinces; especially, every day, there are nearly 400 small and medium waterways vehicles moving across

the river, some even deliberately overtake other vehicles at very close distances, easily leading to collisions and have an accident. In just a short time, the waterway police patrol team discovered and handled many overloaded vehicles. Many barge carrying sand, river water level flooded through the floor, sand is too high, obscuring the visibility of the sailor.

For vehicles of transport on the routes to the island, due to the important nature as well as the understanding of the vehicle owners, violations are rare. However, during the rainy season, many vehicle owners do not accept strictly comply with notices of time, safety equipment for tourists, as well as exceeding the level of transport regulations when transporting construction materials to the island.

From the beginning of the year until now, there have been 04 cases of water traffic accident in the province, caused by overloading, as well as failure to comply with the regulations on safety for travelers when participating in traffic. In particular, during the rainy season, the violation of the provisions of the law on ensuring safety and order of waterways in general and the violation of overloading allowances in particular increase the risk, unsafe traffic on the province's waterways.

In addition to the achieved results, in 2018, the transport sector of Kien Giang province still has some shortcomings and limitations that need to be overcome in the coming time, such as: there is a lack of inspection and management guidance in the operating direction, monitoring; have not implemented well and fully the content of regulations on coordination with agencies, districts and towns; some documents have been implemented but the quality for people to understand and implement is still limited. The management of progress and quality of some transportation works has not met requirements; disbursement of capital construction investment must adjust the plan many times; state management on seaports, inland waterway wharves do not comply with the planning, administrative inspection is still slow and not resolute.

2.3. Situation of knowledge about civil liability of inland waterway transport vehicles owners in Kien Giang province

For vehicles participating in traffic in general and waterway transport vehicles, the strict observance of traffic laws is an absolute thing. Because, it not only concerns the rights and lives of individuals but also affects the rights, even the lives of others when an accident occurs. Therefore, it is extremely important to understand correctly and fully understand your civil responsibilities when participating in traffic. It is even more important for owners of vehicles involved in water transport business.

Most owners or operators of watercraft participating in water transport and business know the danger level of overloading, oversize vessels as well as compliance with regulations on vehicle standards, traffic safety and insurance for vehicle owners as well as taxpayers to operate and operate vehicles. However, violations continued and tended to increase.

When interviewed, many vehicle owners said that it was difficult for each shipment of goods, so they carried as much goods as possible, in order to profit more, if unfortunately discovered, only administrative sanctions. There are a number of vehicle owners who do not buy insurance for people who are hired, serviced on board and even vehicles of them facilities do not. For some owners of business vehicles with small and odd nature, small vehicle loads, do not participate in business registration. Many owners of vehicles still operate according to pre-existing river habits. When asked the question: Why do not you register your business? Many media owners answered: No matter how long it is, there is no problem!

To further clarify the understanding of civil liability of inland waterway transport vehicles owners when participating in transportation and business in the waterway sector, the authors conducted a survey with two groups of subjects: owners waterway vessels participating in traffic on river routes and owners of waterway means participating in traffic to island routes, the results are shown in the following chart:

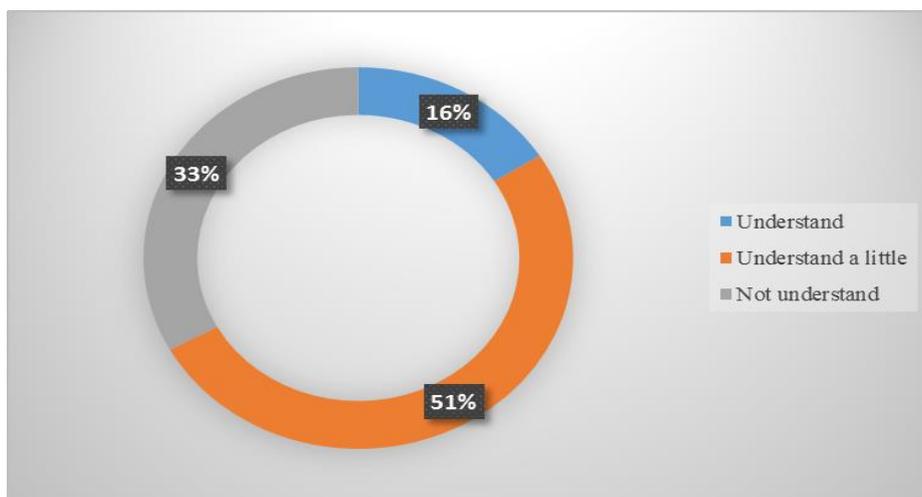


Fig. 1: Understanding the Civil Law of inland waterway transport vehicles owners on rivers

Survey results of 200 waterway transport owners participating in the traffic on rivers such as: Rach Gia - Ha Tien, Rach Gia - Long Xuyen, Rach Soi - HauGiang, Mr. Hien - Ta Nien show: vehicle owners do not know clearly the Civil Law is up to 33% (66/200 respondents), the number of people who know that is 16% (32/200 respondents), the remaining 51% (102/200 respondents) are vague and some of these only remember the 2005 Civil Law, but little is known of the 2015 Civil Law.

As for the survey results of vehicle owners on routes from the mainland to the island (frequency 100) although their awareness and awareness of civil liability have changed, the number of vehicle owners understanding of civil law and their responsibilities are not high. This is evidenced by the following figure:

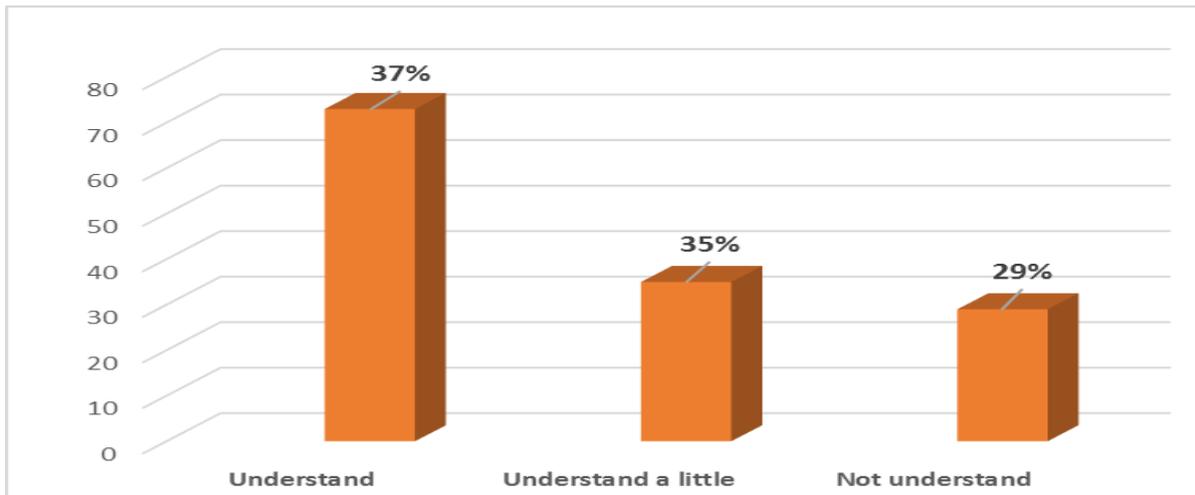


Fig. 2: Understanding the Civil Law of inland waterway transport vehicles owners on routes to islands

When interviewed, some vehicles owners appeared to be indifferent to the violations as well as gave many reasons to explain those violations, one of the important reasons is that many vehicle owners are less knowledgeable about their responsibilities. His responsibility when participating in traffic as well as business in the field of water transport. Typically, there are the owners, when being inspected by the provincial authorities, on his hands have 3 to 5 bill of sanctions for overloaded traffic from the checkpoints of other provinces. This shows that the awareness of compliance with the laws on traffic safety as well as the sense of civil liability of the vehicle owners is not high. There are a number of vehicle owners explain: “Knowing that overloading is illegal, but because each trip lasts from 3 to 5 days, we have to accept overloading to make a profit, if carrying the right load, the profit will not be high”.

Regarding the current acts of overloading on waterway vehicles, the provisions of Article 28 of Decree No. 132/2015/ND-CP stipulate the sanctioning of administrative violations in the field of inland waterway transport. The Government has stated clearly the sanctioning level of administrative violations in the field of inland water transport with a fine ranging from 50,000 VND to 12,000,000 VND. In particular, the act of transporting goods beyond the safety water mark above 1/2 of the freeboard height of a vehicle, for vessels with a gross tonnage of between 15 tons and over 1,500 tons, an additional penalty: custody the Captain’s certificate, the driving license for 1-2 months (Government of Vietnam, 2015).

In addition, the Decree clearly stipulates other regulations on handling of administrative violations as well as sanctions and other remedies. However, the number of owners of inland waterway transport vehicles who answered did not know up to 34% (frequency of 102/300 respondents), number of unknown answers was 37.7% (frequency of 113/300 respondents), the rest respondents only understood 28.3% (frequency of 85/300 respondents).

In order to have a basis for offering basic solutions to improve civil liability for inland waterway transport vehicles owners in the province, the research team conducted the survey by questionnaire, the results are as follows:

Table 2: Some vehicle owners’ understanding of civil liability-related issues

Numerical order	Content	Yes		A little		No	
		Frequency	%	Frequency	%	Frequency	%
1	Do you think insurance for vehicles and people involved in water transport are important?	156	52.0	102	34.0	42	14.0
2	Do you think it is important to buy insurance for vehicles and people involved in water transport?	137	45.7	94	31.3	69	23.0
4	Do you know of any insurance policy?	97	32.3	102	34.0	101	33.7
5	Do you know the premium rates?	54	18.0	122	40.7	124	41.3
6	Do you know the extent of compensation for damages to inland waterway vehicles?	78	26.0	113	37.7	109	36.3
7	Do you know the forms of administrative sanctions when vehicles are violated?	80	26.7	105	35.0	115	38.3
8	When the consequences of violations have to overcome? (check only 2 boxes with and without)	52	17.3			248	82.7

The results of the survey showed that many owners of inland waterways transport were not aware of the regulations, as well as the penalties for vehicles violating the waterway traffic law. Worth mentioning is that up to 82.7% (248/300 respondents) said that they did not know about having to overcome the consequences when the vehicle of transport violated and caused consequences; many inland waterway transport vehicle owners also answered: just compensation is done!

Thus, it can be said that the knowledge about civil liability of inland waterway transport vehicle owners in Kien Giang province is relatively low. This is an alarming issue and also poses many problems for the waterway transport management unit in the province. In order to improve civil liability for water transport owners in the province, there should be many synchronous solutions.

3. PROPOSE SOME BASIC SOLUTIONS

Although the transport system of Kien Giang province is diverse and complex, but with the motto of “Traffic goes ahead to paving the way”, over the past time, with the attention of the Central Government, the Party Committee, local authorities, transport industry of Kien Giang province has made great progress, meeting promptly the needs of socio-economic development of the province in the new situation, including a significant contribution from the owners of inland waterway transport vehicles of province.

3.1 General solution

Firstly, improve the role of state management in the management of inland waterway transport, strengthen the state management of vehicle quality, service quality, and traffic safety, and create a healthy competitive market for all economic sectors participating in inland waterway transport business.

Secondly, continue to perform the work of ensuring the order and safety of road and waterway traffic in the province. Strengthen patrol, control and management of operation of cross-river passenger wharves, waterway transport vehicle from shore to island. To ensure traffic order and safety, the provincial police need to direct the competent authorities to strengthen inspection and supervision ... the observance of the provisions of the law, especially the regulations on service quality standards of inland waterway transport owners, especially for businesses trading in this field. Strictly handle according to law provisions on violating individuals and business establishments, to create deterrence. At the same time, the competent authorities should quickly resolve complaints and denunciations about issues related to business activities, passenger transport and material transport, in order to ensure the fair equal, effective in competition as well as ensure the safety of life and property for people involved in inland waterway transport.

Thirdly, Kien Giang province needs to have mechanisms and policies to encourage businesses with capacity and conditions to participate in the business of inland waterway transport. Department of Transport should set up a professional council (can invite reputable scientists) to advise the competent authorities to review the dossier for the establishment, issuance and revocation of operation licenses. For businesses involved in this sector, any unit or organization doing business must have a permit granted by the competent State agencies. The competent State agencies shall be responsible for appraising, reviewing dossiers and issuing operation licenses for organizations and units wishing to directly conduct business and meet all conditions, records in accordance with the law. Therefore, to facilitate the development of businesses participating in the business, it is necessary to continue to promote administrative procedures in order to facilitate the establishment and resolution of regimes and policies for businesses. However, if any establishment fails to comply with the provisions of law, the competent State agency will revoke its operation license.

For the inland waterway traffic police force, which is the core force to ensure traffic safety and order, so the improvement of professional qualifications, education of sense of responsibility, correction of behavior and attitude in interacting with road users and water transport owners that is necessary. In addition to modernizing equipment, working facilities, innovating to improve the quality of patrols in the direction of increasing maneuverability, patrolling and controlling along the route in charge so that when detecting a violation, immediately determined. It is necessary to drastically enforce and impose penalties for waterway vehicle operating in contravention of regulations. Only in this way can it create surprise and limit the subjectivity of the vehicles involved in traffic. The purpose is to create a habit for road users to strictly abide by traffic safety laws. Besides, it is necessary to drastically stop the situation of asking begging, even negative in the process of handling waterway traffic violations.

Focus on inspecting and handling vehicles with large tonnage, carrying construction materials, flammable substances, passengers and tourists, etc. Resolutely handle and force to overcome consequences for violations which are raw causes causing traffic accidents, overloading the permissible load, exceeding the prescribed number; vehicles which do not ensure technical safety, fire and explosion prevention and safety, are not equipped with life-saving and shipwreck salvage facilities and are not equipped with enough crew members; crew members, vehicle drivers do not have a license, a professional certificate, or have but are not suitable, the vehicle is not registered and failing to test quality of vehicle transport .

Fourthly, proactively and promptly advise the Party Committee and the Director of the Provincial Public Security Department to develop plans, programs, and direct the implementation of major and focused tasks, enhance responsibility in the struggle and prevent conspiracy and anti-sabotage activities of hostile forces, crime prevention and handling complex issues related to traffic order and safety in inland waterways in Kien Giang province. Strengthening the political-ideological education for cadres and soldiers to be assured of their work, at the same time seriously implementing the working process, office rules, office culture and beautiful image-building behavior of waterway police towards the people.

3.2 Specific solution

Firstly, for the waterway traffic police force in Kien Giang province, it is the core force to ensure traffic safety and order, so the improvement of professional qualifications, education of sense of responsibility, correcting attitudes when interacting with road users and waterway transport vehicles owners is a necessary job. In addition to modernizing equipment, working facilities, innovating to improve the quality of patrols in the direction of increasing maneuverability, patrolling and controlling along the waterway routes in charge so as to detect violations, instant settlement. It is necessary to drastically enforce and impose penalties for waterway vehicle operating in contravention of regulations. Only in this way can it create surprise and limit the subjectivity of the vehicles involved in traffic. The purpose is to create a habit for the vehicles participating in the traffic to strictly abide by the laws on traffic safety. Besides, it is necessary to drastically stop the situation of asking begging, even negative in the process of handling violations of waterway transport.

Secondly, renewing the content, methods of propagation and education of the law on inland waterway transport, the regulations on handling of administrative violations in the field of waterway transport to owners of vehicles and vehicles drivers, people in traffic know and obey. Regular or irregular activities in coordination with newspaper agencies, Radio and television stations of the province, district radio station, PX15 office build reports, news...propaganda, reflect the situation of safety in inland waterways transport, activities of inspecting and handling administrative violations of functional units and branches for common dissemination, education and prevention.

Thirdly, develop a plan to organize exchanges and dialogues for vehicle owners, crew members, vehicle drivers ... to absorb the regulations related to inland waterway transport and give feedback about the inadequacies of this system, the shortcomings of the inspection and management agencies ... thereby raising the awareness of law observance, raising the civil liability of traffic participants, of vehicle owners, of business establishments and responsibilities of State management agencies in the field of inland waterway transport.

Fourthly, strengthening the dissemination of laws and regulations on navigation: through the mass media, professional groups to propagate the situation of waterway traffic safety and order, enforce regulations on responsibilities of water transport owners as well as business establishments. Need to renovate the form and content of popular propagation and education of laws on traffic order and safety, insurance regulations, levels and penalties such as photo exhibition, distribution of leaflets transmission...

4. CONCLUSION

Over the years, with the efforts of Kien Giang's departments and agencies, the observance and understanding of regulations of inland waterway transport vehicles owners in the province have improved. In general, transport activities on inland waterways are at a safe threshold. But with the above-mentioned situation, along with the rapid increase of inland waterway transport vehicles when the vehicles owners have certain knowledge when participating in transportation and business in this field, it may cause catastrophic. Under these circumstances, propaganda and education for waterway transport vehicles owners to understand their responsibilities is an important thing and needs to be done immediately.

The waterway traffic police force is actively implementing the plan to ensure traffic safety, raising the civil liability of waterway transport vehicles owners with specific activities: promoting propaganda and dissemination, education on Civil Law, inland waterway traffic law; the necessity of insurance for vehicles owners and operators; guide boat people to wear life jackets, floating tools as well as necessary skills when traveling by waterway; at the same time, strengthening patrol and control work on waterways, resolutely handling violations.

Good implementation of these requirements is also the implementation of policies to ensure safety for everyone, creating trust and motivation for owners of inland waterway transport vessels, striving to bring waterway safety issues of Kien Giang province become a bright spot in the Mekong Delta.

5. REFERENCES

- [1] Dai, D. V. (2015). Law on compensation for non-Vietnamese damages, Judgments and judgment comments. Thanh Hoa: Hồng Đức
- [2] The Government of the Socialist Republic of Vietnam. (2015). Decree on penalties for administrative violations against regulations on inland water transport (No. 132) Hanoi: Government office.
- [3] Kien Giang Provincial Police, Waterway Police Department. (2016). Summary report on Police work in 2016 (From November 15, 2015 - November 16, 2016) (No. 93). Kien Giang: Office of waterway police office.
- [4] Kien Giang Provincial Police, Waterway Police Department. (2017). Summary report on Safety-Social Security Regulation 2017 (November 16, 2016 to November 15, 2017) (No. 109). Kien Giang: Office of waterway police office.
- [5] Kien Giang Province Police, Waterway Police Department. (2018). Summary report on assurance of social safety and health insurance in 2018 (from November 16, 2017 to November 15, 2018). (No. 159). Kien Giang: Office of waterway police office.
- [6] National Assembly of the Socialist Republic of Vietnam. (2004). Inland waterway transport law. Hanoi: National Political Publishing House.
- [7] National Assembly of the Socialist Republic of Vietnam. (2014). Law amending and supplementing a number of articles of the Law on inland waterway transport. Hanoi: National Political Publishing House.
- [8] National Assembly of the Socialist Republic of Vietnam. (2015). Civil law. Hanoi: National Political Publishing House.
- [9] Tap, P. T. (2017). Vietnamese Civil Law comments and applies the responsibility to pay damages outside the contract. Hanoi: People's police.
- [10] Thanh, L, V. (2017). Penalties for violations and damage compensation under Vietnamese commercial law. Hanoi: Justice.

- [11] The Government of the Socialist Republic of Vietnam. (2015). Decree on penalties for administrative violations against regulations on inland water transport (No. 132) Hanoi: Government office.