

DEATH PENALTY UNDER A VIEW OF HUMAN RIGHT LAW: A CASE STUDY OF VIETNAM

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Abstract: *General Council of United Nations enacted a Resolution to require the members to eliminate the death penalty in the Code of Penal. Therefore, there are many member states around the world have abolished this penalty out of the legal system. This regulation not only protects the human right better but also express the progress of development of legal legislation. Following this trend, in 2015, when enacted new Penal Code, the National Assemble of Vietnam made many changes in the regulations related to the crime and penalty. Dead penalty in Vietnam still exist but scope and number crime can be applied this penalty less than before. In this paper, the author will analyze the nature of the death penalty in relationship with human rights law and link it to Vietnam's law and regulations.*

Keyword: *death penalty, human right law; relation; case study; Vietnam*

1. Introduction

"Capital punishment" is derived from the Latin word "capitalis" whose root is "caput" - meaning "head" with the implication that the head is an integral part of life. For a human being, the punishment for losing his head means depriving him of his life. Legally, the death penalty is "the deprivation of a person's life under a sentence declared by a lawfully established Court, aimed at punishing the person for committing a particularly serious crime". This is the most severe punishment in the system of penalties, which has existed since ancient times in human history.

A death penalty is the execution of a person according to a legal process as punishment for a criminal act. It is considered the most effective crime prevention solution (permanently eliminating the accused from society). The purpose of the death penalty is not only to punish who commit serious crimes, but also to give the most severe warning to who intend to commit similar crimes, thereby minimizing similar crimes recurring in the future.

Since ancient times, death penalty has been defined in the legal system of most countries around the world, except in societies with a national religion that prohibit it. During the eighteenth century in Europe human rights holders did not accept this ruler's right; demanding abolition of the death penalty. Today, the moral, criminal and practical death penalty is a hotly debated issue in many countries, and views can differ within a cultural or ideological region.

The United Nations General Assembly adopted, in 2007, 2008, 2010, 2012, and 2014, non-binding resolutions calling for the global death penalty suspension, with the aim of finally repealing. In EU member states, according to the Lisbon Treaty, Article 2 of the European Union's Charter of Fundamental Rights prohibits the death penalty. In addition to the European Union, there are 47 other member states of the United Nations that have also eliminated the application of the death penalty. On the contrary, many countries such as China, the United States, Japan, Singapore, South Korea still maintain the death penalty for the purpose of

creating a punishment capable of deterring serious crimes to ensure general security for the society. More than 65% of the world's population lives in the countries where the death penalty is, and the four most populous countries in the world (People's Republic of China, India, the United States and Indonesia) are still applying the death penalty and is unlikely to abolish it in the near future. In early 2016, there are 65 countries still have the death penalty law, 103 countries have completely repealed this law, 6 countries have repealed for common crimes (only the death penalty for special crimes such as war crimes), and 30 still have the death penalty but have not applied for a long time.

In Vietnam, the Penal Code 2015 was enacted, the number of crime applied dead penalty decreased much. It reveals that the compliance of human rights in Vietnam better day by day.

2. Literature review

Victor Hugo, the literary emperor of France, opposed the death penalty and wrote a book entitled "Deathly Sentenced Memoirs", which resonated widely and sparked a sensation that prompted many to demand the abolition of the sentence. The book comes in the form of a novel by a condemned person. Hugo believes that the abolition of the death penalty is his highest goal, since the death penalty was created by Louis XI and a French minister before the French Revolution.

Mai Sato (2018). From Measuring Support for the Death Penalty to Justifying Its Retention: Japanese Public Opinion Surveys on Crime and Punishment, 1956–2014: The death penalty remains a controversial issue in Japan. While Japan has been a signatory to the International Convention on Civil and Political Rights since 1979, the Japanese government has been reluctant to abolish the death penalty on the grounds.

Frank Zimring, David T Johnson (2008). Law, society, and capital punishment in Asia. Temporally, the general trajectory of capital punishment in the Asian region seems downward (though generalizations about patterns in this part of the world are undermined by significant data problems). Asia is also a useful territory for testing the generality of theories of capital punishment based on European experience. Looking forward, Japan and South Korea, two developed nations in Asia that still retain the death penalty, may indicate what other Asian nations are likely to do as they develop. Ultimately, Asia either will become a major staging area for world-wide abolition or the campaign against capital punishment will fail to achieve global status.

Ahmed Al-Nuemat, Asma Ghnaimat, Asma Ghnaimat (2017). Death Penalty in Jordan between Abolition and Retention: the penalty have been divided into two trends: Calling for its abolition due to cruciality as well as the impossibility to return after execution in case of error when judged, whereas the other trend stipulates that this penalty is fair and suits the seriousness of the committed crime, in addition to the criminal who is being too dangerous by committing such crime, and there is no hope to reform him. At the end of the article, we have realised that it was not possible and unacceptable to abolish the death penalty; it was punishable for the most serious crimes because it was commensurate with the harm it had caused, nor could there be an alternative punishment for execution and appropriate to the committed act. But the imposition of punishment must be restricted to the extent of the most serious crimes, not imposed against political offenses, and the maximum guarantees must be followed to limit the error in judgment or execution.

The social defence theory, led by Mark Ansel, which represents the moderate wing of the theory, states that hope must be maintained towards the rehabilitation and reforming the criminal. It is unacceptable to say that there is a stage of despair in reforming and rehabilitating certain criminal.⁴¹ In this regard, Ansel adds that world's requirements are to recognise and believe in human rights, including the right to life. This right is protected by the state by refraining from killing. Punishment has the goal of reforming the criminal and society should not lose hope.

Grammatica, is an Italian lawyer, who called for the repeal of the criminal law with all its traditional ideas, as well as the abolition of harsh punishments, and to be replaced by the social defence system, who is working to reform the accused.

Grammatica is one of the most prominent supporters of the theory of social defence. He represented the extreme wing of the movement. He gave priority to study the accused and to stand by them. The goal of social defence is to reform the criminal; hence punishment must be abolished for this purpose.

Jean-Marcizé in his book "On the crime", argues that civilised progress has not been able to stop murders since the time of Abel's murder, so the murders will not be ended with the imposition of the death penalty.

Albert Camus, writer and philosopher, says that the man lives within a society and cannot be compensated in any way at the time of their death, and that each human commits mistakes at any degree, even if it does not reach the level of serious crimes, should the stage of despair in reforming the criminal not be reached. The right to live is a natural right for every single human being, even if they were evil, as they see society when they expel the offender because they are criminals; they believe that society is free from evil, and that criminals are a product of their society; when a society is intact and flawless it will produce good individuals but if the society is bad it will produce poor individuals with a tendency towards crime.

Camou led a campaign against the death penalty, as he described it as an abhorrent massacre, an insult to the individual and his body, a return to barbaric times, and that scientific development did not affect the punishment, which facilitated the transition from ancient times to ours. Camus did not hesitate to submit proposals to the state if it does not abolish the death penalty by implementing them in more scientific ways that are more respectful and less torturous. As he did not despair in calling and demanding the abolition of the penalty, civilisation and progress may prompt officials to abolish the penalty or to no longer enforce it.

Professor Boeckelmann, supported by a group of researchers, considered that there was no logical justification for maintaining the death penalty. Justice, thinking and humanity were heading towards the theory of social defence.

3. Methodology

To do this paper, the author used many kinds of methodologies of research to analysis international and national legal policy and documents (law and regulations) related to or govern dead penalty and human rights.

Besides, the author base on the hypotheses developed in the study show how to use law and regulation to govern dead penalty and human rights. To examine these relationships, the author developed some hypotheses and tested these hypotheses using some empirical models. The

developed models confirm the assumptions and demonstrate that increasing the use of law and regulations to govern death penalty and human rights. The hypotheses which are personal views regarding the relationship between independent and dependent variables based on the literature review.

Moreover, statistics and surveys are also used to finish this research. The author uses the poll to survey the Vietnamese citizens who live in Vietnam. The author also sent the questionnaires to them to ask them some questions related to the death penalty and human rights.

The research of this paper is finished based on combining all of the methodologies above. However, because of time and financial limitations, the paper still lacks some information. The author hopes to take the opinion of the audience and reviewers to do better for the next time.

4. Findings and Discussion

4.1 The right to live in the international law

The right to live is a natural and fundamental human right recognized in core documents of international human rights law. Specifically, Article 3 of the Universal Declaration of Human Rights (UDHR) in 1948 states: "*Everyone has the right to life, to have freedom and to be personal safety*". Article 6 of the International Convention on Civil and Political Rights (ICCPR) in 1966 concretizes Article 3 UDHR, which states: "*Everyone has an inherent right to live. This right must be protected by law. No one can be arbitrarily deprived of his life*".

In addition to ICCPR, a number of other international human rights conventions also address the right to live, including the Convention on the Rights of the Child, the Convention on the Prevention and Punishment of Genocide, etc.

The character, nature and connotation of the right to live have been addressed by the Human Rights Committee (HRC - an agency established under the ICCPR to oversee the implementation of this convention by member states). In General Comment No. 6 (adopted at the 16th session in 1982), the key points can be summarized as follows:

- The right to live is "*a human supreme right that in any circumstance, even in the state of emergency, cannot derogate the performance ...*" (Paragraph 1).
- The right to live should not be understood in the narrow sense only of the integrity of life, but rather, this right includes aspects to ensure human existence. Under that approach, securing the right to survival requires states to take steps to reduce child mortality and increase the life expectancy of the population, in particular, measures to eradicate elimination of malnutrition and diseases (paragraph 2). That includes both passive and active measures to ensure the lives of people, especially low classes of individuals and groups.
- One of the common threats that threaten the right to live is crimes of war and serious crimes such as genocide or crimes against humanity. Therefore, combating these crimes is also a guarantee of the right to live. According to that approach, the guarantee of the right to live in Article 6 is linked with the obligation to ban activities of propaganda of war and incite hatred and violence as set out in Article 20 of the ICCPR (paragraph 3).
- Preventing criminal acts that cause harm or take away human life is an important measure to ensure the right to live. Member States should take measures to prevent and punish arbitrary deprivation of human life caused by any subject, including by state agencies and officials

(paragraph 5). In this regard, kidnapping and disappearance are also considered to be one of the forms of deprivation of the right to live, and therefore, member states have an obligation to come up with effective measures and plans results to prevent and investigate these cases (paragraph 4).

Also regarding the right to live, in addition to General Comment No. 6, HRC adopted General Comment No. 14 (23rd session, 1984) which reaffirmed the importance of the right to live as the basis for all human rights, while reiterating the requirement to comply with Article 6 of the ICCPR in all circumstances. This document emphasizes that war, especially nuclear war, is the greatest threat to the right to live and requires states to limit and end arms races, especially not design, testing, manufacturing, stockpiling, deploying, and using nuclear weapons - behaviours that, according to the HRC, should be considered crimes against humanity.

The nature of the right to live has to do with the question that states should not take the life of individuals under all circumstances. In this regard, it should be affirmed that from the provisions of international human rights law, the right to live is supreme right and must always be applied even in national emergencies (no temporary suspension of implementation - General comment No. 6 of HRC, stated above) but not absolute right (for example right cannot be taken away under all circumstances). The fact that the ICCPR (Article 6) still provides the death penalty is a clear proof of that, because the death penalty is essentially a deprivation of the right to live of an individual, but only when applied arbitrarily, it would be considered an arbitrarily international human rights law. The first Protocol added ICCPR on the abolition of the death penalty (1989), while strongly encouraged by the United Nations, was not mandatory, but only optional for member states. In other words, international human rights law does not prohibit countries from using the death penalty as a punishment to prevent and punish criminals, but encourages to limit and abolish such harsh punishment.

International human rights law contains very specific and detailed provisions on the limits of the actions of law enforcement officers to prevent arbitrary violations of human rights, including the right to live. Even so, in the spirit of international human rights law and the criminal law of nations, death in the case of the compulsory use of force to protect one's own and / or those another person who is threatened by the murdered person will not be considered a violation of the right to live, if the act of using force is legal, necessary and commensurate with the threat. In addition, the use of lethal force in criminal arrests, suppression or rebellion, if legal and reasonable, is not considered a violation of the right to live.

In general international law does not prohibit the application of the death penalty. Paragraph 2 of the International Convention on Civil and Political Rights (ICCPR) states that "In countries where the death penalty has not been abolished, it is only allowed to apply this penalty to serious crimes most are based on the law prevailing at the time the crime was committed and must not be inconsistent with the provisions of this Convention and the Convention on the Prevention and Punishment of Genocide. The death penalty is executed only on the basis of a legally valid judgment ruled by a court of competent jurisdiction". Although in this regard, in 1989, the United Nations General Assembly adopted the Second Optional Protocol ICCPR which provided for the abolition of the death penalty, but this Protocol was only the optional recommendation, should not be legally binding on all members and only those members who voluntarily participate in this Protocol have international legal obligations to eliminate the

death penalty within the system. In summary, to date, the abolition of the death penalty is not an international legal obligation for all countries to comply.

This, of course, does not mean that states that still maintain the death penalty can arbitrarily apply the death penalty. Paragraph 2- Article 6 of the ICCPR Convention recognizes that the death penalty can be applied but also immediately imposes the restriction “Only the death penalty can be applied to the most serious crimes”. In fact, countries do not have a consensus view on the concept and levels of "danger" of crime. But it is still possible to determine the scope of the "most serious crime" through the exclusion method. Specifically, the first guarantee in the document of guarantees on the rights of persons sentenced to death by the United Nations Economic and Social Council (ECOSOC) in 1984 stated “In countries the death penalty still remains, which applies only to the most serious offenses, which are understood as crimes committed intentionally, causing fatal or particularly serious consequences”. More importantly, it is the limitations of the first warrant of the above document that “exclude the possibility of applying the death penalty to economic crimes and those that do not have direct victims or to active religious activities or political nature, including activities of treason, espionage and other actions that constitute its behaviour abstract .”

In addition, the death penalty is limited by the applicable object: *"The death penalty is not allowed to be sentenced to offenders under 18 years of age and not to execute the death penalty against pregnant women"*¹, *"International law prohibits the application of the death penalty to people with intellectual and mental disabilities, pregnant women and mothers nursing infants"*.²

For those facing the death penalty, international law also provides a range of judicial warranties to guarantee their fundamental rights as well as fairness, accuracy. The judicial guarantees include: procedural procedures to ensure a fair trial, the right to apply for parole, the right of prisoners with a limited term worthy of appeal and applying for parole, humane treatment of death row inmates, not executing the death penalty when the relevant proceedings have not been completed.

4.2. The Obstacles of Applying the Death Penalty in the Modern Era

Despite the great controversy that still existed between the supporters of the death penalty and its opponents, it did not prevail over the other, although the number of countries that have abolished the punishment has increased, and the punishment has faced impediments to the implementation and proper application, which achieves the goal of imposing the sanction and for those countries that continue working with the punishment, including the following:

Death penalty is acknowledged by the Islamic Sharia, but Arab and Islamic countries. Their legislation is based on Islamic religion, and did not consider it as prescribed by the Sharia. Instead it is based on the positive laws for penalties, namely Western laws, which became old and out of date and need to be re-considered according to recent circumstances and conditions which might lead to the abolition of the penalty for some crimes and replacing them with other penalties or restricting the application of the penalty. These Arab countries did not apply the penalty as stated in Islamic law, nor could they cancel it because of its violation of Islamic teachings. The proper modern application of the penalty has not been achieved, although most

¹ Clause 3 - article 6 of the ICCPR Convention

² Report Special Officer of the United Nations on arbitrary execution and shortened proceedings

Western laws have abolished the death penalty from their legislation or narrowed the scope of its application.

Some judicial systems still suffer from a lack of impartiality, and sometimes lack fair trial. Torture methods may be used to take confessions from the accused. They are also judicial errors, absence of proven evidences, and inequality between the accused, especially when obtaining the help of lawyers; for example, some accused are rich and may have senior lawyers experienced in defending them in serious cases, leading to a failure to prove the charge, and therefore not being sentenced to death. This in some cases may not be afforded by the other accused.

Lack of judicial independence. There are courts beside ordinary courts, such as military courts or state security courts, which follow their own procedures and are characterised by speed. The accused or his lawyer may not have sufficient time to defend and prove his innocence, which affects the external or internal security of the State.

Several countries have expanded the imposition of the death penalty for crimes that cannot be described as extremely serious, political crimes. The death penalty has become a sanctuary for dissenting opponents and opponents.

The implementation of the death penalty must ensure the minimum possible suffering and pain for the convicted person, not to be offensive to dignity and humanity, and to be implemented in secret and not publicly.

International pressures practiced by international and regional organisations and non-governmental organisations, especially those established with a view to abolishing the death penalty, have played a role in the abolition thereof in many States from their legislation and their suspension in other States. These play a role in not providing for punishment in the ICC system, despite considering crimes at the highest level of horrors, severity and cruelty.

To enable the death penalty to play its role in deterring individuals from committing crimes, the sentence must be activated, not only for law suspension, but also for disabling laws. Amnesty must be used in death penalties when a victim's family retrained their right. In this case, the death penalty shall be replaced by another penalty.

4.3 Right to live in Vietnam's legal system

In Vietnam, the issue of protecting the right to live has been mentioned in the laws of the feudal dynasties, such as the Imperial Dynasty of the Law (Hau Le), the Gia Long Code (Nguyen) through regulations to prevent and punish arbitrary acts that take away human life.

In modern times, the right to live in a broad sense has been affirmed by President Ho Chi Minh in the Declaration of Independence in 1945, by reiterating this right statement in the Declaration of Independence 1776 of the United States: "All people are born with equal rights. God gives them rights that are ineffective. Among those rights, there is a right to live, the right to freedom and the right to seek happiness." Subsequently, specialized legal documents, especially criminal law documents, have provisions on protection protecting people's lives from illegal harm.

However, in the Constitutions 1946, 1959, 1980, 1992 and in the previous specialized laws, the right to live is not mentioned as a specific right, but only through inviolable rights offense

on the body, life, health, honour and dignity of citizens. Only in the Constitution 2013, this right is directly stated in Article 19 and is associated with the legal protection of life: “Everyone has the right to live. Human life is protected by law. No one will be deprived of his life against the law”.

Vietnam has also acceded to both the International Basic Conventions on Human Rights 1966 (ICCPR, ICESCR) and a number of other international treaties on the rights of vulnerable social groups such as the Convention on the Rights of the Child 1989, Convention on the Elimination of Discrimination against Women 1979. Vietnam also signed and plans to soon ratify the Convention on the Rights of Persons with Disabilities 2006. These are legal bases to promote the rights of disadvantaged groups, including the right to live, in Vietnam.

In addition to the above provisions of the Constitution 2013, the right to live is currently protected through a number of other provisions of the Constitution and in a number of specialized laws, such as the Penal Code, the Civil Code. In general, Vietnam has a fairly complete legal framework to ensure the rights of disadvantaged groups, including their right to live in a broad sense. That is the right to ensure conditions for survival in. For example, the Law on protection, care and education of children passed in 1991 (amended and supplemented in 2004) stipulates the basic rights of children, including the right to care (Article 12). The law also devotes chapter IV (Articles 40-58) to provide for the protection of children in special circumstances (Orphans without support, abandoned children; or disabled children; children is a victim of a chemical agent; children infected with HIV / AIDS; children must work hard, dangerously, be exposed to toxic substances; children have to work away from home; Street children; sexually abused children; drug addicts children; children in conflict with the law) that has important implications for the survival and development of these children.

From the above analysis, it can be seen that Vietnamese law is compatible with basic international principles of the right to live. However, there are still some aspects that need to be studied to continue to improve in accordance with international law and general trends in the world, including the issue of the death penalty.

4.4. Dead penalty in Penal Code of Vietnam

In the Vietnamese Penal Code, death penalty is the most special and severe punishment in the system of punishment, depriving convicts of the right to live and only applies to offenders of a particularly dangerous nature distinction for society. The death penalty is regulated in the Penal Code and decided by the Court.

The death penalty is an objective social phenomenon. It is the means of protecting the society itself against the violation of its conditions of existence. Crime threatens the existence of society, so society has to naturally react to punish offenders. As a kind of punishment, the death penalty as well as other penalties in the penalty system have common features, such as: it is a coercive measure of the State; is regulated in criminal law; is applied by the Court according to a strict and fair procedural order towards the convicted.

However, as a special punishment, the death penalty has its own characteristics. Firstly, it is the most severe kind of punishment in the system of punishment. It deprives you of the right to live of the convicted person. So it is only regulated for particularly serious offenders. Secondly, the death penalty is intended to radically prevent new offenses on the part of the convicted. This penalty does not have the purpose of reforming or educating the convicted

person, thus it deprives them of their chance of reintegration and rehabilitation. Thirdly, the simultaneous death penalty has the potential to have a high degree of effectiveness in general prevention. Fourthly, the death penalty is unchanged in nature, depriving it of the ability to overcome mistakes in judicial activities.

If in the amendments and supplements to the Penal Code 1985, the stricter approach has been shown by increasing the death penalty in legal practice, the Penal Code 1999 and 2015, there is a softening (non-criminalization), by narrowing and clearly defining the scope and conditions of this penalty.

The Penal Code 2015 provides for the death penalty as follows:

“Article 40. Death penalty

1. Death penalty is a special penalty only applicable to people committing particularly serious offenses belonging to one of the group of crimes infringing upon national security, human life, drug-related crimes, corruption, and a number of other particularly serious crimes as prescribed by this Code.

2. The death penalty shall not be imposed on persons under 18 years of age for crimes, pregnant women, women nursing children under 36 months old or persons aged full 75 years or older when committing crimes or in adjudication.

3. Do not execute the death penalty against the convicted person in the following cases:

a) Pregnant women or women nursing children under 36 months old;

b) Persons aged full 75 years or older;

c) A person sentenced to death for property embezzlement or accepting bribes who, after being convicted, actively surrendered at least three-quarters of the embezzled property, accepted a bribe and cooperated actively with the authorities in detecting, investigating, or handling crimes or committing great publicity.

4. In the case specified in Clause 3 of this Article or where a person sentenced to death is granted parole, the death penalty is converted to life imprisonment.”

The death penalty is specified in the Penal Code and decided by the Court. However, as a special punishment, the death penalty has its own characteristics:

- First, the death penalty is the most severe type of punishment in the system of punishment, depriving the convicted person of the right to live, so it is only prescribed for particularly serious offenders.
- Second, the death penalty is intended to radically prevent new offenses on the part of the convicted. This punishment is not intended to reform or educate the convicted person, thus it deprives them of their chance of reintegration and rehabilitation.
- Third, the simultaneous death penalty has the potential to have a high degree of effectiveness in general prevention;
- Fourth, the death penalty is unchanged in nature, depriving it of the ability to overcome mistakes in judicial activities.

Compared with the provisions on the death penalty in the Penal Code 1999, the Penal Code 2015 provides the following basic new points:

- ❖ Narrow the scope of capital punishment. The Penal Code 2015 eliminates the death penalty for 07 crimes: Property robbery (Article 168); Crime of producing and trading counterfeit goods is food, food, food additives (Article 193); Illegally possessing narcotics (Article 249), illegally appropriating narcotics (Article 252); Crime of destroying works, facilities, important means of national security (Article 303); Crime of fighting against orders (Article 394) and Crime of surrendering to enemies (Article 399). It is necessary to narrow the regulations on narrowing the scope of the death penalty application of the Penal Code in 2015, demonstrating the humanity of the socialist criminal law, consistent with the socio-economic development of the Penal Code, meeting the requirements of crime prevention and fighting and international integration.
- ❖ The death penalty is not applied to persons aged full 75 years or older. Article 35 of the Penal Code 1999 provides that the death penalty is not applied to juvenile offenders. The death penalty does not apply and does not enforce the death penalty for pregnant women, women nursing children under 36 months old when committing crimes or at trial. The practice of implementing these regulations over the past time has brought into play the positivity of the criminal policy of our State. However, in the process of building the Penal Code in 2015, through discussion and consultation with the People, many opinions suggested and agreed with the need to expand this institution in the direction: adding a provision that does not apply a death penalty against person aged full 75 years or older when committing crimes or in trial and not executing the death penalty against such persons. The handling practice shows that these cases are very few, on the other hand, the continued application of the death penalty for offenders aged full 75 years or older is not humane and reduces educational significance. Therefore, in order to contribute deeply to show the humanity and the leniency policy of our country's criminal law, the Penal Code 2015 has added a new regulation: not applying the death penalty to people aged full 75 years or elder when they commit a crime or in trial and no execute the death penalty against them³.
- ❖ The death penalty was not executed in some other cases. In addition to the provision, there is no death penalty and no competition the death penalty for a person aged full 75 years or older who commits a crime, the Penal Code 2015 also adds a new provision: no execution of the death penalty for a person convicted of death for property embezzlement, accepting bribes that, after being convicted, actively surrendered at least of the embezzlement, received bribes, and actively cooperated with authorities in detecting, investigating, handling crimes or committing public service large.⁴ The basis of this provision is: if the offender is self-interested, the factor of overcoming consequences, recovering the appropriated property should be considered as a special circumstance during the execution of the judgment. In fact, the recovery of our country's corrupt assets is currently facing many difficulties. In the condition of our country's economy is still poor, corrupt assets are extremely large. Therefore, this new regulation is both humane and lenient by the State, and helps the recovery of assets to be feasible,

³ See: Clauses 2 and 3, Article 40 on the death penalty, Penal Code 2015

⁴ . See: Point c Clause 3 Article 40, Penal Code 2015

reducing the burden on the Vietnamese economy in general. However, to ensure fairness, offenders, in addition to returning embezzled property or accepting bribes, must meet certain conditions with such positive factors to be considered for non-examination the death penalty.

- ❖ The provisions for consideration of the reduction of sentences for persons sentenced to death are reduced to life imprisonment. The Penal Code 2015 has added a case of reduction in the penalty level which stated: “*For the person sentenced to death to enjoy the concession or the person sentenced to death in the case specified at Point b or c, Clause 3, Article 40 of the Code, the time for serving the penalty to be considered for the first reduction is 25 years and even though it is reduced many times, the actual time limit for serving the penalty is 30 years*”⁵ that the Penal Code 1999 is not regulated. Actual enforcement of a criminal sentence for death row inmates who are reduced to life in prison, if they do not stipulate that they are allowed to continue the sentence reduction. There will be a new kind of punishment: life imprisonment without a reduction, they must serve until death. The indefinite execution of those inmates artificially burdens the State when conditions for serving a lifetime imprisonment sentence for these people in prisons must be met. On the other hand, the lifelong execution of the sentence will leave the convicted person unmotivated to strive, try to be productive, develop extreme, negative psychology, which can lead to their execution. Other dangerous acts such as: disrupting, destroying the prison, committing suicide or fleeing, fighting. Therefore, the Penal Code 2015 supplementing a provision allowing persons sentenced to death to continue to be considered for reduction is very correct and necessary. However, the conditions for considering the reduction of sentences of these people are stricter than other people sentenced to life imprisonment, that is: the time spent serving the penalty for the first reduction is 25 years and even though it is reduced. Many times, it is still necessary to ensure the actual execution time of the penalty is 30 years. The above provisions deeply reflect the humanity, democracy and priorities of Vietnam’s Party and State; pay attention to the physiological characteristics of adolescents and pregnant women, and nursing women, the effect of those characteristics on their cognitive ability and behaviour at the time of crime.
- ❖ Apply the death penalty. Previously, Vietnam’s authority executed the death penalty by shooting. The practice of executing the death penalty in the form of firing squad has many limitations such as: the cost of the execution is high, the execution of the judgment needs to organize a judgment execution council with many participants, the image of the firing squad causes pressure force, psychological obsession for those executing sentences, relatives of those who were shot when receiving the bodies of their relatives for the customary burial. Currently, Vietnam is applying the death penalty for prisoners by injecting poison into the body of crimes according to the provisions of Decree No. 47/2013 / ND-CP (amending and supplementing Decree 82/2011/ND-CP).

⁵ See: Clause 6 Article 63 Penal Code 2015

5. Conclusion

This paper discussed the death penalty in relation with human rights law and regulations following international law and Vietnam's legal system. It began to discuss about the definition of the death penalty. Then, the author also talked about the particular application of the penalty in Vietnam legislation, the procedures of its judgment and the guarantees that must be met when judging it. This paper examined pros and cons trends to apply the death penalty. Moreover, it expresses the views and justifications of the author following the human rights law. At the end of this paper, the author formulated the following conclusions:

Disagreement still existed between the supporters of the punishment and the opponents thereof who attempt to exert pressure on both international and national levels. Although they were successful in some instances: such as the issuance of international treaties on the cancellation of punishment or at least facilitating the preparation for abolition, but several countries returned to apply the punishment after they had abolished it from the legislation, or froze its implementation. Vietnam still applies death penalty but decrease the scope and quantities of crime that punished by this penalty.

Supporters of the abolition of the death penalty offered several alternatives for the death penalty. The most important being replacing death penalty with the following penalty, which is hard labour; but in this case, the death penalty criminal will be equalised with the hard labour criminal. Hence, the level of seriousness will be the same.

Regardless of the penalty criticism, the death penalty is required for some crimes with a high level of seriousness and which threaten the State's safety and security, as well as to deter other individuals from committing crimes.

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