

# LEGAL FRAMEWORK AND PRACTICES OF THE EXCLUSION OF THE DEATH PENALTY ON PREGNANT WOMEN OR MOTHERS OF YOUNG CHILDREN IN VIET NAM

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The article focuses on the Vietnamese Criminal Code on not imposing the death penalty on pregnant women and nursing women of young children by analyzing the legal basis, discussing the shortcomings and propose solutions to complete it.

**Key words:** death penalty, Vietnamese Criminal Code, pregnant women, nursing young children,

## 1. Introduction

The exclusion of the death penalty on pregnant women or mothers of young children is recognized and protected by international law. Article 6 (5) of the 1966 International Covenant on Civil and Political Rights states: "Sentence of death shall not be carried out on pregnant women." Similarly, the Vietnamese Criminal Code stipulates: "The death penalty shall not be applied to pregnant women, mothers of children under 36 months old". However, compared with international law and the law of some countries, the Vietnamese Criminal law has some different provisions such as the broader application of the exclusion of the death penalty, the determination of the child's age or the adoption of a child to exclude the death penalty. In practice, the exclusion of the death penalty in the above cases also raises many problems, especially in the case of taking advantage to avoid the application of the death penalty. It raises the issue of stakeholder's responsibility. This paper examines the legal framework and practices of the exclusion of the death penalty on pregnant women or mothers of young children in Vietnam on the basis of a comparison with international law and the law of some other countries.

Criminal Law is one of the effective tools for the State to fight crime prevention as well as protect the legitimate interests of citizens and organizations. The provisions of the Penal Code of Vietnam not only help to remove factors that obstruct and endanger society, but also ensure that everyone can live in a safe and highly

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humane environment. Article 3 of the Vietnam Penal Code 2015 (Amendment 2017) sets out the principles for handling individuals and legal entities committing crimes, which emphasize the elements of leniency and humanitarianism. It can be seen that this principle is expressed throughout many names in the current Penal Code. One of the provisions demonstrating the principles of humane handling in Article 3 of the 2015 Penal Code is the provision on the exclusion of the death penalty for pregnant or nursing women. This provision not only ensures the strictness of judgment execution, but also demonstrates the leniency of the law. However, in practice, due to the existing problems or unspecified legal grounds, there have been many cases of taking advantage of this provision to "evade the death penalty".

## **2. Research objective**

In the scope of this article, the author analyzes the legal basis of the provisions on the exclusion of the death penalty for women who are pregnant or nursing children. Within the study, the authors aim to address the issues surrounding the death penalty relative to women who are pregnant or nursing children under 36 months. In this regard, the authors focus on analyzing current criminal law provisions on the death penalty and the target audience is pregnant women or nursing children under 36 months. In addition, the authors go into analyzing the shortcomings that exist in the criminal law, through the analysis of real cases. From there, point out some remaining problems and give make recommendations to complete this regulation.

## **3. Materials and methods**

### *\* Analysis and synthesis*

The research mainly uses analytical and synthesized methods to clarify the provisions of Vietnam criminal code regarding the concepts of death penalty and death penalty, which are pregnant women or nursing children. . Analyze the factors, the causes of the problems, synthesize, evaluate and then give solutions to overcome.

### *\* Case study*

In the study, the authors used a number of cases with problems related to the death penalty for pregnant and nursing women. By analyzing the content of the case, the authors point out the limitations and support their argument.

## 4. Research contents

### 4.1. Legal framework of the death penalty for pregnant or nursing children under 36 months in Vietnam

Like other penalties, penalties are imposed to penalize offenders, to rank, to prevent range. Naturally, however, the punishment is different in that it is deprived of the most important human right - the right to life. The execution of the death penalty for a person will cease to exist, permanently remove from society. And while not as common, the fact that cooperatives face the death penalty are pregnant women or nursing children. For this school, the law of Viet Nam is the rule of the type, except for enforcement. As follows:

- In the 5, Article 8, International Covenant on Civil and Political Rights, of which Vietnam is a member state, orient: “No death sentence is allowed for offenders under 18 years of age and not be safe to execute the death penalty for pregnant women ”;
- In Clause 2, Article 40 of the 2015 Penal Code (amended in 2017), stipulates: No penalty shall be imposed on people under 18 when committing crimes, pregnant women, women raising children. under 36 months old
- At Point a, Clause 3, Article 40 of the 2015 Penal Code (the 2017 amendment), stipulates: No death penalty shall be imposed on the associate in case of a pregnant woman or a woman. are raising children under 36 months old;
- Content 4, Article 40 of the 2015 Penal Code (amended in 2017), stipulates: In the case specified in Clause 3 of this Article or the person is combined with the reduced image, then The image the image is converted to the general body.

Based on basic reason, it can be seen that the Vietnamese law has specified the issue, as follows:

*First*, the exclusion of the death penalty is understood to include both non-imposition of penalties and non-enforcement of sentences. As such, permitting to apply within the scope of work the exclusion of penalties for pregnant and nurturing women is determined at both the scope point and the test or enforcement point. Accordingly, pregnancy or child-rearing details that appear at the time the woman is executed, processed or sentenced, but not yet implemented, is completely excluded. death.

*Second*, for young children, the age of that baby is exactly 36 months old

*Third*, if the offender is a woman or is raising a child under 36 months old, the sentence cannot be executed. In this case, life imprisonment will be used as a substitute for punishment.

The provisions of Vietnamese law as above are reasonable, based on the following reasons:

*Firstly*, eliminating the death penalty for a pregnant woman, nursing a child under 36 months old is for the benefit and work of that child. The fetus or young child has a life associated with the mother, the form of the mother means deprivation of the right to life of the fetus or the child cannot receive an establishment from the mother - this is extremely important for normal development of children.

*Secondly*, the exclusion of the penalty in the case of the right to exercise motherhood is a human right that cannot be taken away. To be protected the motherhood and the unique and exclusive human rights of women. Because of the monopoly nature, it is impossible to give up the offenders' right to perform their ministry even though they are so dangerous that they must be excluded from society.

*Thirdly*, the exclusion of death penalty for pregnant women and nursing children under 36 months old comes from the question of calculating personnel of the law in general, the law in particular. As we all know, when a woman is pregnant or raising a baby is a very difficult and difficult time. Pregnancy and childbirth make women exhausted and vulnerable. Because of that, the imposition or enforcement of punishment for pregnant women and young children is considered to be of a more extreme nature than other subjects.

## 4.2 Discussion

The fact that the law provides for the exclusion of the death penalty for individuals offenders who are pregnant women or nursing children not only contributes to favorable conditions for judgment execution but also ensure that women and their children live in a safe and highly humane environment, overcoming difficult times. However, it is this provision that creates loopholes for offenders to take advantage of for the purpose of evading judgment execution, instead of overcoming the difficulties that women face as expected by the law:

*Firstly*, the 2015 Penal Code stipulates that the subject of the death penalty exclusion is pregnant women in all phases: violations, the trial stage and even the sentence execution section. This provision has created a loophole that those who

want to escape the death penalty can apply if the management and supervision of the accused, the accused or the accused are not strictly implemented.

An example of this limitation is the death row inmate Nguyen Thi Hue (42 years old): At the appellate trial on June 19, 2014, this defendant and 28 others were sentenced to death in a 32,000 sale. heroin cake. The process of waiting for the execution of the sentence in the detention center of the police detention center of Quang Ninh province, Nguyen Thi Hue tried to get acquainted with culinary criminal Nguyen Tuan Hung (27 years old, from Quang Ninh). The female inmate raised the issue of paying Hung 50 million VND to help her get pregnant. In August 2015, Hung twice took his sperm into a plastic bag and tried to put it in the corridor of C5 prison, where Hue was held. Taking advantage of the shackles being removed to the toilet, female inmates pumped sperm into the womb. When the incident was discovered, the death row inmate Nguyen Thi Hue was more than 25 weeks pregnant and was expected to give birth in late April 2016. According to Article 35 of the 1999 Penal Code, the death penalty was not enforced against women. pregnant, nursing a child under 36 months old. In this case the death penalty translates into life imprisonment. Thus, from a law showing the humanity of the State plus the lax management of the period of detention, many women see it as a tool to evade the execution of the death penalty.

*Secondly*, the provision for offenders of children under 36 months old to be excluded from the death penalty is not really specific. The purpose of this policy is to provide the best possible care for the child. The period from 0 to 36 months is the period when a baby's development is closely related to the care of the mother. However, the problem raised here is to understand that raising a child under 36 months means a natural or adopted child. Article 24 of the Law on Adoption 2010 stipulates: "The consequence of adoption is that from the date of handover and adoption, between the adoptive parents and the adopted child have all rights and obligations of the parents and the child; Adopted children and other members of the adoptive parents' family also have rights and obligations towards each other in accordance with the law on marriage and family, civil law and other relevant laws agency ".

Accordingly, the rights and obligations of adoptive children and natural children to adoptive parents and biological parents are the same. Thus, the loophole is identified here is: in the case, a woman, after committing an act of violation of the law, finds that with the execution of this act it is possible to bear the death penalty,

Therefore, right after performing the act and that act has not been detected, immediately adopt a child under 36 months old. Although, Article 13 of the Law on Adoption 2010 stipulates prohibited acts that prohibit the following acts: Taking advantage of adoption to take advantage of or taking advantage of adoption to violate laws and customs. The ethics, good cultural traditions of the nation, however, it is relatively difficult to determine whether or not an adoption act is to violate the law. Moreover, according to the analysis of Article 40 of the Penal Code at the legal basis, it can be seen that the provision that the case of raising a child under 36 months old to be excluded from the death penalty is no exception. inconsistency in the law on this matter.

*Thirdly*, analyzing and comparing Vietnamese legal regulations with international laws and other countries in the world on the issue of the exclusion of the death penalty for pregnant women and nursing children, the Penal Code Vietnam 2015 defines a relatively broad scope in allowing the exclusion of the death penalty for pregnant women and nursing children. A woman's pregnancy and child-rearing status are recognized both at the time of crime and at the time of trial or judgment. Accordingly, the fact that pregnancy or child rearing is present at the time a woman commits a crime, is tried or has been sentenced but has not been executed, the person will be completely excluded from the sentence. death. The above provisions, although showing the humanity of the law, are not consistent with the International Agreements to which Vietnam is a member have provisions on the above issue. This will make it difficult to resolve existing cases .

The death penalty is the most severe one in the penalty system of Vietnam's criminal law, applied to particularly dangerous crimes, in order to punish offenders and prevent new crimes. However, with provisions on the exclusion of the death penalty for women who are pregnant or nursing children under 36 months, Vietnam's criminal law has shown leniency and humanity in the spirit of handling. right person. In other words, the provision on the exclusion of the death penalty in this case is to ensure the human rights, the right to life and the right to care of the vulnerable and innocent that is the child of the person who commits the act. It is also a show of tolerance for the woman who commits it. However, the loopholes just analyzed has created dangerous consequences because a person has committed an offense and took advantage of loopholes in the provisions of the law to avoid the execution of a judgment. above, not only destroys society but also shows disregard for the law, as well as creating a bad precedent in individuals' thinking and actions.

Besides, it is this provision that gives rise to negativity in the judgment execution process. The legal consequences not only stop at the fact that an individual commits a crime evading the death penalty, but also corrupt individuals, abetting the act. Because the fact shows that, cases of female defendants in solitary confinement awaiting the execution of the death penalty are pregnant with the help, assistance or neglect of prison guards. Although, supporting the accused to evade the death penalty is the individual choice of the prison officer, it cannot be denied the responsibility of the collective, demonstrating the weakness in management and operation. relevant agency dynamics, which lead to making a bad impression on State power agencies, lose confidence among the people. Another noteworthy issue is the raising of children of death row inmates who take advantage of the rule to eliminate imprisonment by getting pregnant while waiting to serve their sentences. By taking advantage of the loophole of the law in eliminating the death penalty by getting pregnant in prison, these women not only evade the punishment of the law, but also create additional burden on society. Because even though they don't have to receive the death penalty, serving a life sentence also makes them unable to care for their children. Article 45 of the Law on Execution of Criminal Judgments stipulates the benefits for female prisoners who are pregnant or nursing children under 36 months old as follows:

1. If pregnant female prisoners are not temporarily suspended from serving their imprisonment sentences, they shall be provided with a reasonable accommodation, entitled to periodic or irregular pregnancy check-ups and medical care in necessary cases; are entitled to reduce working time, enjoy a healthy diet and drink.
2. Pregnant female inmates are entitled to work leave before and after giving birth according to the provisions of the Labor Code. During the maternity leave, inmates are guaranteed the standard, the amount of food according to the instructions of doctors or doctors, and will be provided with necessary food and supplies for the care of the newborn. Female inmates nurturing children under 36 months of age are given an appropriate time to care for and nurture their children.
3. Prisons, detention camps, criminal judgment enforcement agencies District-level police shall have to carry out procedures to request birth registration for inmates' children. The People's Committees of communes where inmates serve their sentences shall register and issue birth certificates.
4. Female inmates with children 36 months old or older must send their children back to their relatives to take care of. In case the offender's children do not have

relatives to be adopted, the prisons or detention camps affiliated to the Ministry of Public Security, detention centers affiliated to the Ministry of National Defense or provincial police criminal judgment enforcement agencies must request the Department Labor, War Invalids and Social Affairs where an inmate shall appoint a social protection facility to receive and nurture. Within 15 days after receiving the request, the Department of Labor, War Invalids and Social Affairs shall appoint a social protection establishment responsible for receiving and nurturing. Those who have completed the imprisonment sentence are entitled to receive back their children being nurtured by the social protection establishments.

5. The prisons must organize kindergartens outside of the detention area to care for and nurture children of inmates under 36 months of age and children of prisoners aged 36 months or older pending admission procedures. social welfare establishments.

#### 4.3 Theoretical and practice

In order to ensure the leniency and humanity of the Law in the matter of pregnant women or young children committing illegal acts under the death penalty framework, but still ensuring the fairness of the law In order to avoid the case of taking advantage of the loopholes of the law to "evade the death penalty", the author of this article proposes the following:

*First*, with respect to the provision that excludes the death penalty for pregnant women. In order to avoid abetting female convicts awaiting the execution of the death penalty to have the opportunity to commit acts leading to pregnancy, it is necessary to improve the management of prison managers, in addition to currently seriously implementing solitary confinement against female convicts. For female accused subjects, who are being detained for crimes with a penalty of up to the death penalty, it is necessary to strictly manage and limit the facilitation in the process of visiting family members.

*Second*, with respect to the provisions that exclude the death penalty for women who are nursing children under 36 months. In this case, it is necessary to have specific regulations to address adoption and natural children. In case the legal rights and obligations of adoptive children and natural children are recognized are the same, there should be a strict guidance on the application of the exclusion of the death penalty. In addition, it is necessary to review legal documents with relevant regulations and adjust accordingly, to avoid different regulations among law branches, causing difficulties for the application of the law.

Third, for the death penalty exclusion. The exclusion of the death penalty as provided by law in Vietnam, as analyzed above, is understood to include the non-application of the death penalty and the failure to enforce the death penalty. However, most of the International Agreements to which Vietnam is a signatory and international law, stipulating that the exclusion of the death penalty for pregnant or nursing women is failure to execute the death penalty. Thus, the exclusion of the death penalty in Vietnamese law is broader. However, according to the author of the article, the provision on the above-mentioned scope of the exclusion of the death penalty will make it difficult to investigate, prosecute and adjudicate. Moreover, for cases with foreign elements, it will be easy to cause confusion in the selection of the handling plan. Therefore, in order to ensure humanity but still meet the needs of settlement and integration, the scope of the exclusion of the death penalty should be narrowed down to the non-execution of the death penalty.

## **5. Conclusions**

It can be seen that the exclusion of the death penalty for pregnant or nursing women, not only ensures the humanitarian principle of the law, but also ensures human rights for women. Women, children - are the largest group of people at high risk of human rights vulnerability. However, the reality proves that this regulation still has certain loopholes that the subjects can take advantage of to avoid the punishment of the law. This affects the respect of the law, causes confusion in the public opinion, and adversely affects society's thinking. Therefore, it is thought that the legislature and law enforcement agencies need to have a more multidimensional view on this issue, so as to be able to soon come up with effective solutions, to avoid missing criminals.

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