

**THE ROLE OF DECRIMINALIZATION AND DEPENALIZATION
IN THE ABOLITION OF THE DEATH PENALTY
FROM PRACTICE IN VIETNAM IN THE PERIOD 1999 - 2015**

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Abstract:

The diminishing of the death penalty has become a common trend in the development of the world. In recent years, The United Nations has promoted the abolition of capital punishment. By 2019, 106 countries have eliminated this penalty in their criminal law regulations. In harmony with this general process of the world, in the last 35 years since 1985, The Criminal Code of Vietnam has been amended many times in the clemency direction, the number of provisions that implied the death penalty has decreased dramatically. In Vietnam, decriminalization and depenalization are two legal processes that play an essential role in capital punishment elimination. The practice of criminal law codification in Vietnam has proved that there is a close relationship between decriminalization, depenalization, and narrowing the scope of the death penalty application. This kind of penalty can be abolished by (1) Replacing it with less severe ones; (2) Diminishing the criminal liability of a crime by the process of depenalization and decriminalization. As a result, to promote the elimination of capital punishment, having a clear understanding of the relationship between decriminalization, depenalization, and diminishing the death penalty is very important. However, the practice shows that the research on these two categories has not been received adequate attention from legal scientists. This disadvantage has led to the fact that the process of eliminating the death penalty is affected by many negative influences, such as subjective psychology, social pressure, but not scientific factors. To gradually overcome this limitation, within its scope, this article will clarify the role of criminalization and decriminalization that manifest the content of clemency in the national criminal justice policy to abolish the death penalty through the practice of Vietnam in the period 1999-2015.

Keywords: *Decriminalization; Depenalization; The death penalty; Abolition; Human rights; Clemency.*

1. Introduction

Along with the success of the democratic revolutions in the early of the XVIII century, the promotion and protection of human rights and developing the concept of the rule of law has become dominant directions that the whole world pursued. In that trend, the limitation and elimination of capital punishment in a country is a crucial index to measure the level of clemency and progress. One of the obstacles in doing so is the underestimation of researching decriminalization and depenalization. Within its context, this article will demonstrate the dialectical relationship between the abolition of the death penalty in national criminal law from 1999 to 2015 in Vietnam and affirms the impediment of precise awareness on decriminalization and depenalization for eliminating capital punishment in any country.

2. The theory about the death penalty

The death penalty is the most severe punishment in Vietnamese criminal law, by which the offenders are deprived of the right to life by the state. Because of its severity, capital punishment can only be imposed on the most severe crimes¹ by a legal decision by which the Court considers that the offender is no longer capable of being educated and reformed. Consequently, the state must remove those offenders from society. Capital punishment is the objective counteraction of the community towards violations of the most important social relations.

Capital punishment is one of the earliest penalties in history. It was born so early that it is almost impossible to be determined the exact time. Its birth was also an inevitable rule reflecting human nature or the primitive and onerous law of the struggle for existence². The Code of Hammurabi, created in the XVIII B.C., was the first official legal document that recorded this punishment in 25 crimes. Following this famous code, many other statutes regulated capital punishment as a penalty imposed on all recorded crimes. For example, the Hittite Code in the XIV B.C. and the Draconian Code of Athens in the XVII B.C. exemplify this³.

In general, the death penalty has all the features of punishment in criminal law. Beforehand, it is the most severe undesirable or unpleasant outcome imposed by the courts to pass a legally binding judgment; the purpose of this discipline measure is to punish the offenders and educate others to have respect for the law. However, as an extreme punishment, some of its features can be listed as following⁴:

Firstly, capital punishment is the most severe kind of discipline that ends the life of the offender, and so it is only applied for those who committed the felony;

Secondly, one of the benefits of capital punishment is that it completely removes the propensity of recidivism. However, educating the convicted is not the purpose of the death penalty. Thus, it takes away the opportunity of reintegration into society of the offenders;

Thirdly, it shows a likelihood of achieving high effectiveness of crime prevention;

Fourthly, capital punishment holds the unchangeable characteristic since there cannot be any correction or compensation after its execution.

3. The tendency of the death penalty elimination in the world

Due to the harsh nature of the death penalty, many countries began to abolish it from their criminal law regulations from the beginning of the eighteenth century. The elimination of capital punishment in criminal law proved necessary based on the following main points⁵:

(1) The death penalty is not an effective means of discipline⁶;

(2) It is a remediless punishment in case of a false judgment⁷;

¹ In the Vietnamese Criminal Code, the most severe crimes refer to a felony. Further on in this document, this article will use the term felony.

² Mayr, Ernst, *The Growth of Biological Thought: Diversity, Evolution, and Inheritance* (Harvard University Press 1982) 485.

³ Death Penalty Information Center, 'History of the death penalty, The early history of the death penalty' (*Death Penalty Information Center* 07 February 2019), <<https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/early-history-of-the-death-penalty>> accessed: 21 December 2020.

⁴ Trinh Quoc Toan, Punishments in Vietnamese criminal law, under the perspective of human rights protection (The National Political Press 2015) 127.

⁵ MOJ, UNDP & EU, *Report on the possibility for Vietnam to join The Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)* (EUJULE 2019) 7-8.

⁶ Jeffrey Fagan, 'Deterrence and the death penalty in the International perspective' in UNHRC, *Moving away from the death penalty: Argument, trend, and perspectives*, (United Nation 2015) 98.

⁷ Samuel R. Gross, Barbara O'Brien, Chen Hu, and Edward H. Kennedy, 'Rate of false conviction of criminal defendants who are sentenced to death' (2014) 111 20 PNAS 7230, 7235.

- (3) The life-imprisonment seem to be as effective as the death penalty in terms of crime prevention⁸;
- (4) In practice, it is unnecessary to impose the death penalty to remedy its consequences to the victims and their families⁹;
- (5) It is incorrect to argue that the death penalty is less expensive than life imprisonment¹⁰.

Until now, the necessity of capital punishment is still a debatable matter¹¹. However, in practical, among with social development, and the rule of law, the clemency trend in criminal law has shown a global inclination of lessening the severity of punishments reduced the use of capital punishment on offenders. This tendency even approaches as far as to remove it from the criminal code¹². In the years 2007, 2008, 2010, 2012, and 2014, the United Nations General Assembly has encouraged many countries to suspend capital punishment and move toward abolition. However, the United Nations (UN) did not force their member states to abolish this penalty¹³. To promote this notion, the United Nations has issued many important documents, including the International Covenant on Civil and Political Rights 1966 and The Second Optional Protocol to the International Covenant on Civil and Political Rights 1989. Accordingly, it affirmed the importance of the right to life for every human being. In countries where capital punishment is in force, the Court is the only subject that can impose this penalty on the most dangerous crimes. However, the imposing of this punishment must comply with the criminal law regulations. Besides that, it must not oppose the mentioned documents and the Conventions on the prevention and punishment of genocide. Capital punishment is imposed on the offenders only based on a legally binding judgment of competent jurisdiction court. Although it is not compulsory for states to immediately abolish the death penalty, the Convention emphasizes that under no circumstances can provision in Article 6 of the International Covenant on Civil and Political Rights be invoked to delay or prevent the abolition of capital punishment in any Contracting State. By Article 1 of The Second Optional Protocol to the International Covenant on Civil and Political Rights, The United Nations sets the responsibility for states to eliminate the death penalty. Hence, each State party to the Protocol shall take all necessary measures to abolish the death penalty within its jurisdiction. With the continuous efforts of the United Nations, by 2019, according to Amnesty International, 106 countries have eliminated capital punishment for all types of crimes¹⁴.

4. Relationship between the abolishment of capital punishment and the progress of decriminalization and depenalization

⁸ Amnesty International, 'Does it give victims justice?' (*Amnesty International* 08 January 2016) <<https://www.amnesty.org/en/what-we-do/death-penalty/death-penalty-your-questions-answered/>> accessed: 21 December 2020.

⁹ Corey Daniel, Burton, *Families of murder victims' perceptions of capital punishment: a content analysis of what family members say following executions* (Electronic Theses and Dissertations 2012) 184 31.

¹⁰ Matthew Rousu, 'The Death Penalty vs. Life Incarceration: A Financial Analysis' (2016) 7(4) *Susquehanna University Political Review* 25.

¹¹ Nguyen Dang Dung, Pham Hong Thai, Vu Cong Giao, La Khanh Tung, *Things to know about the death penalty* (The Labor Press 2010) 40.

¹² MOJ, UNDP & EU, *Report on the possibility for Vietnam to join The Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)* (EUJULE 2019) 1.

¹³ Maria Donatelli, '117 countries vote for a global moratorium on executions' (*World Coalition*, 19 December 2014) <http://www.worldcoalition.org/united-nations-resolution-moratorium-death-penalty-executions-general-assembly.html>, accessed: 21 December 2020.

¹⁴ Amnesty International, 'Death penalty in 2019: Facts and figures' (*Amnesty International*, 21 April 2020) <https://www.amnesty.org/en/latest/news/2020/04/death-penalty-in-2019-facts-and-figures>, accessed: 21 December 2020.

Since it is not compulsory but only recommended to abolish the death penalty, each country will consider abolishing capital punishment based on their actual requirements of preventing and combating crime. In such legislative action, the elimination of capital punishment has a close relationship to decriminalization and depenalization¹⁵. By the following points, this article will demonstrate and analyze the connection between these categories.

Firstly, the elimination of the death penalty can only be put into effect by decriminalization and depenalization. In Vietnam, socialist legality is one of the two most essential principles in criminal law. This principle creates a guideline in the process of making, codifying, interpreting, and applying the regulations of the Criminal Code. This principle stipulates that the Criminal Code is the only legal document that sets out the crime and criminal liability to the individual or legal entities committing such crime. Or it can be inferred from this principle that the Criminal Code determines which offense is considered a crime and the criminal liability imposed on each specific crime. The Criminal Code is the only legal document that can abolish the death penalty for one or all crimes. In other words, the only way to eliminate capital punishment is to declare a behavior no longer a crime or by replacing it with a less severe punishment within the framework of criminal legislative activity.

Secondly, with the process of decriminalization, the lawmakers can abolish the death penalty. However, decriminalization is a concept that has not received much attention in the legal sciences community. Many studies have argued that decriminalization is an integral part of the criminalization concept¹⁶. Moreover, for countries following the Civil law system, criminalization (and decriminalization) has not received much attention from the jurists¹⁷. Consequently, it makes the research even more restricting, and therefore, the legislation on reducing capital punishment is also limited. In Vietnam, scientists are approaching this new concept as a *legislation activity that narrows the applicable scope of criminal law by no longer considering an act a crime (that act used to be a crime) and removing the criminal liability imposed on an individual or legal person committed that act*¹⁸. Based on thoroughly scientific grounds, lawmakers will consider whether an offense has all the factors that committed a crime. If they found that that illegal act does not need to be considered a crime, they would decriminalize it and remove its criminal liability. As a result, the death penalty imposed on that crime is also eliminated by decriminalization.

Thirdly, by the process of depenalization, the lawmakers can eliminate the death penalty. Similar to decriminalization, depenalization is not a popular concept acknowledged by legal scientists in international criminal law studies. Depenalization is a form of policy implementation¹⁹, thereby *lowers the critical level of criminal law by reducing criminal liability for criminals*. At the absolute level, the decline of the hazardous level of criminal law means that the lawmakers will eliminate the criminal liability of an offense by decriminalizing that crime²⁰.

¹⁵ Decriminalization and depenalization are two essential legislative processes in Vietnam. There is a gap in the understanding of these categories between Vietnam and other countries. In this paper, I will use the approach methods of Vietnam to explain and analyze these concepts. By doing so, I will clarify the idea of this article.

¹⁶ Luke Namara (Ed), 'Theorising Criminalisation: The Value of Modalities approach' (2018) 7(3) Crime Justice Journal 92

¹⁷ Nina Peršak, *Criminalising Harmful Conduct* (Springer, 2020) 23.

¹⁸ Le Van Cam, *The basics of criminal law science - General (Postgraduate Curriculum)* (Vietnam National University of Hanoi) 41.

¹⁹ Adda, J., McConnell, B., & Rasul, I. 'Crime and the Depenalization of Cannabis Possession: Evidence from a Policing Experiment, Journal of Political Economy' (2014) 122(5) Journal of Political Economy 1131.

²⁰ Ho Trong Ngu, 'Some issues about the penalization and depenalization of illegal acts in the economic field in current criminal policy' (Hochiminhcitygov, 2010) <<http://www.hids.hochiminhcity.gov.vn/>> accessed: 01 December 2020.

On the other hand, we can understand this term as replacing a penalty imposed on a crime with a less severe one²¹ or adding rules that exempt or reduce the criminal liability. For instance, in the third codification of Vietnamese criminal law, by depenalization, the lawmakers dismissed the death penalty imposed on the plunder (Article 133 The 1999 Criminal Code) and replace it with life imprisonment in Article 168 The 2015 Criminal Code. With the concept of depenalization, we can conclude that there are two ways to abolish the death penalty: (1) Replacing capital punishment with other less severe types of punishment; or (2) Removing the criminal liability of an offense through absolute depenalization.

Fourthly, it is essential to take into consideration many scientific grounds of the process of decriminalization and depenalization when abolishing capital punishment. In my opinion, those scientific grounds mentioned above should include:

(1) *The danger brought to the society of the offense:* A decriminalized crime must be an offense that is no longer dangerous to society; Or the social jeopardy of such acts has decreased significantly, making it unnecessary to use criminal law to deal with these illegal acts. In the case of depenalization, when considering replacing the death penalty imposed on an offense, the lawmakers must acknowledge that the social danger of that crime has decreased, making it deterrent enough to impose less severe punishment.

(2) *The relative popularity of the illegal act:* When a crime no longer exists in society, the lawmakers dismiss it by the process of decriminalization. Besides, decriminalization and depenalization of a crime arise when such behavior becomes uncommon in society.

(3) *The ability to effectively prevent and combat dangerous behaviors by civil and administrative legal sanctions in case of decriminalization:* Decriminalized crimes may remain unlawful as defined in other laws. Therefore, before dismissing an offense, it is necessary to examine the effectiveness of preventing and combating such illegal acts by the civil and administrative legal sanctions. If those remedies can control and prevent the offense effectively, lawmakers can initiate decriminalization of the crime.

(4) *The potential for the positive effect of other punishments and judicial remedies that are less severe than the death penalty in case of depenalization:* In the process of depenalization, a less severe penalty will replace capital punishment. This dismissal will reduce the strictness of the sanctions and affects the effectiveness of its imposition. Therefore, the lawmakers need to consider the necessity and efficiency of the replacement penalty to ensure that the crime is well-controlled.

(5) *The economic - cultural - social basis:* Crime is a social and legal concept, so the process of decriminalization and depenalization must be done based on requirements arising from the economic, cultural, and social situation. If the legislators do not consider this basis, it can lead to the risk of criminal neglect. It makes the deterrence of the regulations decrease that negatively impact society.

(6) *The criminology basis:* This basis requires the lawmakers to consider comprehensive factors before deciding to apply decriminalization or depenalization. These factors include

- (a) The identity of offenders;
- (b) The causes and conditions of the crime;
- (c) The developments, dynamics of crime situation;
- (d) The identity of the victim, and more.

²¹ Donohue, Ewing, and Peloquin, *Rethinking America's Illegal Drug Policy*. In *Controlling Crime: Strategies and Tradeoffs* (Chicago Press 2012) 216.

For example, by studies of criminology, scientists have shown that increasing the death penalty has nothing to do with the effectiveness of crime prevention or reducing the rate of serious crime.

(7) *The international integration basis*: The process of decriminalization or depenalization must be based on international standards consistently with conditions in Vietnam. For example, although having not fully implemented the abolition of the death penalty, Vietnam still recognizes this progressive idea and introduces appropriate clemency policies to dismiss capital punishment gradually in criminal law.

After a comprehensive review of these grounds, the lawmakers will have a sufficient foundation to affirm the necessity of abolishing the death penalty for some specific crimes or eliminating this punishment from the criminal law.

Fifthly, correct acknowledgment of the roles and functions of the decriminalization and depenalization process plays an essential role in promoting the abolition of capital punishment in Vietnam and other countries in the world. At the moment, there is not any thoroughly researched study on decriminalization and especially depenalization. In practice, researchers mostly focus on criminalization²² and tend to leave out two such important categories of criminal law legislation. Proper understanding of the role of decriminalization and depenalization helps to clearly define the necessary legislative steps to take to adjust the level of severity of criminal law to criminal offenses that are dangerous to society. Crime is a social-legal phenomenon, so that, depending on each stage circumstances, the danger towards the community of certain types of crime changes. As a result, some crimes may no longer jeopardize or become harmless to the community. The imposing of the death penalty on these crimes becomes too severe and unnecessary. In this case, less harsh punishments may still lead to positive outcomes. In this perspective, sometimes, the death penalty is not as effective as other punishments that leads to the need to replace capital punishment. In such cases, decriminalization and depenalization play an indispensable role. By these legislative actions, the lawmakers make criminal law become compromising and cope with requirements on preventing and combating crimes.

Finally, from the studying of these two concepts, it is required for the legislators to measure the effectiveness of punishments of criminal law (including the death penalty) and other social-legal measures imposed on the offenders. From this analysis, they will have some appropriate adjustments to the severity of the criminal law that promotes the abolition of the death penalty.

5. The abolition of capital punishment by decriminalization and depenalization in Vietnam from 1999 to 2015

The inclination of abolishing capital punishment towards certain crimes in the Criminal Code 1999

Before the 1999 Criminal Code, Vietnam used the 1985 Criminal Code. The amendment in the years 1989, 1991, 1992, 1997 demonstrates a tendency to increase the number of crimes that have to bear the death penalty. In the amendment of the year 1997, there was an increase in the number of crimes subjected to capital punishment. Overall, the legislators regulated this harsh punishment in 44 crimes that was 15 more than the previous one. It accounted for 20.3% of the total of 216 crimes. The increase in the number of regulations that set out this punishment resulted

²² Nina Peršak, *Criminalising Harmful Conduct* (Springer 2020) 23; Thomas Sobirk Petersen (Ed), *Why Criminalize? New Perspectives on Normative Principles of Criminalization* (Springer 2020) 17-110; Duff et al, *Criminalization: The Political Morality of the Criminal Law*, (Oxford University Press 2014) 2; Luke Namara (Ed), 'Theorising Criminalisation: The Value of Modalities approach' (2018) 7(3) *Crime Justice Journal* 92.

from the appearance of new types of crime in this period, namely, drug-related crimes from article 185b to 185d. The amendments in the years 1989, 1991, 1992, 1997 had set out the imposition of capital punishment on a particular group of crimes. These offenses appeared in the transition period to socialism in Vietnam during the 80s of the XX century. For example, Crimes of abusing positions and powers to appropriate socialist property (Article 134a); Crimes of obtaining socialist property by fraud (Article 134), and more. The imposition of the death penalty on 44 crimes had demonstrated a severe criminal justice policy of Vietnam at that time.

The 1999 Criminal Code was a stepping stone for Vietnamese criminal justice policy towards the process of depenalization that narrowing and determining the scope and conditions of imposing this kind of punishment²³. The idea of the death penalty abolition was demonstrated in both sections²⁴: General provision and Criminal offenses in the 1999 Criminal Code.

In General provision, lawmakers have increased the circumstances that forbid the imposition of the death penalty. For example, women nursing children under 36 months old (including adopted children) at the time of committing crimes or being tried shall not bear capital punishment. In particular, capital punishment shall not apply to pregnant women and women nursing their children under 36 months old. In this case, the Court will convert it into life imprisonment. In case of incomplete commission of a crime, the death penalty only applies to felony crimes.

According to the 1999 Criminal Code, by depenalization, the lawmakers narrowed the severity of criminal law, the number of crimes that had to bear the death penalty dramatically decreased. The legislators dismissed capital punishment in the following article: Infringing upon territorial security (Article 81), Destroying detention camps (Article 01), Stealing property (Article 138), Destroying or deliberately damaging property (Article 143), Illegal cross-border transportation of goods and currencies (Article 154), Fake goods not being food, foodstuffs, curative medicines, preventive medicines manufacture and trading (Article 156 and 158 – the 1985 Criminal Code regulates as one crime), Forcing, inducing other persons into the illegal use of narcotics (Article 200), Illegally manufacturing, stockpiling, transporting, using, trading in or appropriating military weapons and technical means (Article 230), Abusing positions and powers to appropriate property (Article 280), Abandoning combat positions (Article 324). It demonstrated the changes in the awareness of lawmakers on the danger and ubiquity of these crimes. Furthermore, practice showed that it was unnecessary to apply this punishment any longer (For example, for the crime of stealing property; abusing positions and powers to appropriate assets of people). The lawmakers also dismissed the death penalty in some crimes via depenalization due to the reformation in the economic, cultural, and social status, such as Abandoning combat positions (Article 258 the 1985 Criminal Code). In the early 1990s, the end of the border conflicts²⁵ and the normalization in relationship with China (1991) and The United States (1995) marked a dramatic change in Vietnam. It lessened the seriousness of the above crimes. Therefore, these crimes did not have to subject to the death penalty anymore.

Additionally, in the process of depenalization, objects (socialist property) of the following crimes in Criminal Code 1985: Obtaining socialist property by fraud (Article 129); Corruption of

²³ Trinh Quoc Toan, ‘*The death penalty in Vietnam Criminal Law – Recommendations*’ (Ministry of Justice, 2016) <<http://www.moj.gov.vn>>, assessed: 22 December 2020.

²⁴ In the 1999 Criminal Code of Vietnam, there are three main parts. They are General provision (Part 1); Criminal offenses (Part 2).

²⁵ In the 80s of the XX century, Vietnam joined two border conflicts against China in the North and The Pol Pot from Cambodia in the South.

socialist property (Article 133); Abusing positions and powers to appropriate socialist property (Article 134a); Obtaining socialist property by fraud (Article 134); Destroying or deliberately damaging socialist property (Article 138); along with other violations of socialist property no longer exist. However, those offenses still possess all the crime elements of a crime regulated in the Criminal Code 1999. After being enacted, there was a reduction to 29 articles that impose the death penalty that takes up 11% of the total number of regulations.

The tendency of abolishing capital punishment against particular crimes in the 1999 Criminal Code, amended and supplemented in 2009.

From the 1980s to the beginning of the XXI century, Vietnam had started to participate in international integrations. The Communist Party of Vietnam understood the importance of applying advanced ideas to developing the Fatherland, including abolishing capital punishment. The Party had made many important decisions on the reformation and refinement of the legal system include Resolution No. 08/NQ-TW on January 2, 2002, of the Politburo on some principal responsibilities of the judicial body, and Resolution No. 49/NQ-TW on June 2, 2005, of the Politburo about the Judicial reform strategy to 2020. These Resolutions have stated the proposal of restricting the use of the death penalty²⁶. The spirit of the Resolutions above matches with the content of The International Covenant on Civil and Political Rights (ICCPR) 1966. It showed the common understanding of Vietnam of abolishing the death penalty and the responsibility as a member state of the Covenant.

In 2009, the lawmakers continued to regulate the idea of the Resolutions of the Communist Party on judicial reform by eliminating the death penalty with some types of crime. By depenalization, the legislators dismissed this penalty for 08 crimes include Rape (Article 111); Appropriating property through swindling (Article 139); Smuggling (Article 153); Making, storing, transporting, and circulating counterfeit money, treasury bills, and bonds (Article 180); Organizing the illegal use of narcotics (Article 197); Hijacking aircraft, ships (Article 221); Offering bribes (Article 289); Destroying military weapons, technical means (Article 334). The abolishment of capital punishment for these crimes is essential to meet the requirements of preventing and combating crimes in practice. Thus, after the amendment and supplement of the Criminal Code in 2009, the lawmakers only regulated the death penalty in 22 crimes²⁷. It accounts for 8% of the total number of criminal law regulations, marks a downward trend in capital punishment imposition after a decade since 1999 comparing with the previous period.

The tendency of abolishing capital punishment against particular crimes in the 2015 Criminal Code, amended and supplemented in 2017.

In the third codification, the legislators have demonstrated the idea of The Communist Party on judicial reform. They restrict the imposition of the death penalty by adding many clemency statutes.

In General provision, Article 40 affirms the definition of the death penalty as an unusual punishment that only applies to offenders who committed felony crimes. This article has fully recognized the group of crimes that have to bear the death penalty compared to the previous one. Accordingly, certain crimes in the group of violating national security, human life, drug-related

²⁶ Phuong Thao, 'Narrowing the scope of applying the death penalty in the Criminal Code 1999' (Central Internal Affairs Committee, 2013) <<https://noichinh.vn/nguyen-cuu-trao-doi/201312/thu-hep-pham-vi-ap-dung-hinh-phat-tu-hinh-trong-bo-luat-hinh-su-nam-1999-293434/>>, assessed: 22 December 2020.

²⁷ Although the lawmakers had dismissed the death penalty in 08 crimes, they still regulated this punishment in 22 others, instead of 21, due to the imposition of the death penalty against Rape against children in paragraph 1 Article 112, paragraph 4 Article 112 of the Criminal Code 1999.

crimes, corruption, and other felonies regulated namely: Fake goods not being food, foodstuffs, curative medicines, preventive medicines manufacture and trading; Terrorism; Undermining peace, provoking aggressive wars; Crimes against Mankind; and War crimes. Article 40.2 and 40.3 of the Criminal Code 2015 added cases of not applying capital punishment on persons who are seventy-five years of age or older at the time of committing crimes or being tried; not applying capital punishment on offenders who are seventy-five years of age or older on crimes as follows: Embezzling property, receiving bribes but actively surrendering and returning at least three-quarters of embezzled properties, receiving bribes, and actively cooperating with the authorities in detecting and investigating crimes or contributing substantially. The narrowing of the range of statutes regulated the death penalty in the Criminal Code 2015 by depenalization shows clemency of criminal justice policy in Vietnam.

Those whose age from seventy-five years old must take into account the following grounds to abolish the death penalty via depenalization:

- (1) The danger brought to the society of the crime;
- (2) The relative popularity of the illegal act;
- (3) The economic - cultural - social basis.

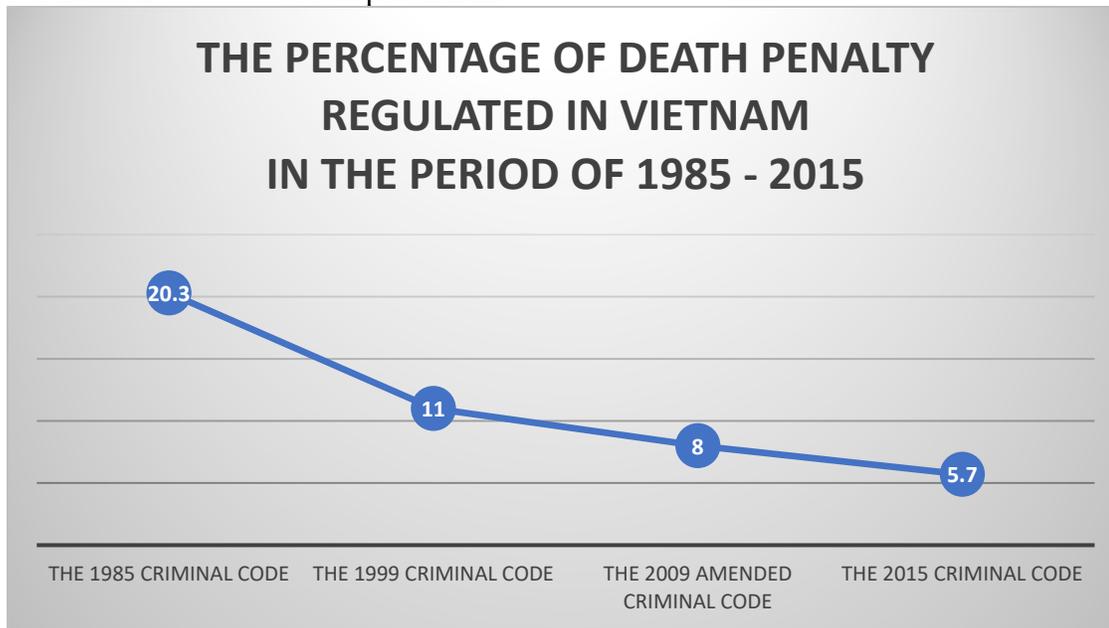
It shows that criminal cases committed by seventy-five years old and above offenders are not popular. On the other hand, remaining the death penalty for offenders who are seventy-five years of age or older is not humane. It reduces the educational significance of criminal law. Moreover, the Vietnamese have a tradition of respecting and tolerating the elderly. Therefore, it is reasonable to dismiss capital punishment via the process of depenalization.

In Embezzlement and receiving the bribe, a specific characteristic of this crime is that the offenders committed it due to their interest. Consequently, it is necessary to consider the factor of overcoming consequences and recovery of appropriated property of the convicted as a mitigating factor. In practice, the recovery of corrupted assets in Vietnam is currently facing many difficulties. The economy is yet to be weak, while the value of corrupted assets is very high. This new regulation shows the idea of clemency in the Criminal Code and also encourages the corrupted officers to return the corrupted property. Consequently, it reduces the burden on the Vietnamese economy. However, to ensure fairness principle in criminal law, apart from returning embezzled property or received bribes, the offenders must meet certain conditions with positive factors above to be considered for not to be executed the death penalty²⁸.

In the Criminal offenses section, the lawmakers remove capital punishment for seven crimes in the 2015 Criminal Code via the depenalization process. They are: Plundering property (Article 168); Manufacturing and trading of counterfeit food or food additives (Article 193); Illegal possession of narcotic substances (Article 249); Appropriation of narcotic substances (Article 252); Destruction of work, facility, equipment essential for national security (Article 303); Insubordination (Article 394), and Surrendering to the enemy (Article 399). Out of the above list, the legislators also dismissed the death penalty with three more offenses. They are crimes of manufacturing and trading of counterfeit food or food additives; illegal possession of narcotics; and appropriation of narcotic substances. The lawmakers separated these crimes from an article that regulated the death penalty and dismissed this punishment on them.

²⁸ Nguyen Thi Hong Loan, 'Discussing the death penalty is regulated by the Criminal Code 2015, amended and supplemented 2007' (The investigation institution of The Supreme Procuracy, 2019) <<https://coquandieu.travkstc.gov.vn/ban-ve-hinh-phat-tu-hinh-duoc-quy-dinh-blhs-nam-2015-sua-doi-bo-sung-nam-2017/>>, accessed: 23 December 2020.

In the third codification, the lawmakers dismissed the crime of conducting banditry activities regulated in Article 83 of the 1999 Criminal Code. As a result, they abolished the death penalty imposed on this crime. However, in this case, this is not decriminalization. The legislators have described the crime elements of this offense in another provision of the 2015 Code. According to the Criminal Code 1999, conducting banditry activities is an offense that opposes the administration of the state by armed activities in mountainous, marine, and other difficult accessed areas, murdering people, and looting or destroying property. This crime is regulated in the Criminal Code 2015 but with a different name as Terrorism (Article 113)²⁹. By taking effect, the Criminal Code 2015 logged a reduction in applying capital punishment to 18 crimes, accounting for 5.7% of the total number of criminal law provisions.



From 1985 to 2015, the numbers of articles that regulated the death penalty have sharply dropped from 20.3% in 1985 to 5.7%. It has reduced from 44 to 18 by 2015, occupies 59% of the total regulated capital punishment since 1985. That is an exceptional effort of the whole political system of Vietnam to eliminate the death penalty. In this process, the roles of decriminalization and depenalization are essential. Overall, there are five articles in which the lawmakers have dismissed the death penalty via decriminalization and twenty-one others via depenalization.

6. Conclusion

In the past 30 years, Vietnam has actively and persistently implemented a constant policy in criminal law. Accordingly, since 1985, the death penalty rate in the Penal Code has decreased to 59%. By 2015, there are only 18 crimes that have to bear the death penalty. It accounts for 5.7% of the regulations in the criminal code. The death penalty abolition is the process of actively absorbing the progressive and clemency ideas of humanity. It shows the great attempt of the Vietnam government to dismiss the death penalty. On that sentiment, the abolition of this severe penalty demonstrates the role of decriminalization and depenalization. Despite its essential, there is limited awareness of decriminalization and depenalization in legal science. Consequently, it delays or reduces the effectiveness of dismissing the death penalty and confounds states, and

²⁹ Pham Manh Hung, 'Criminalization and decriminalization cases in the Criminal Code 2015' (2016) 1 Procuracy Journal 14.

makes them fall into a debate about the necessity of abolishing this penalty in their national criminal law.

Based on Vietnamese practice, the article has analyzed and pointed out the role and the close relationship of the correct perception of these two legislative concepts in abolishing the death penalty. In particular, to abolish the death penalty, lawmakers must consider the scientific basis of the process of decriminalization and depenalization of a crime. It contains the following seven bases:

- (1) The danger brought to the society of the offense;
- (2) The relative popularity of the illegal act;
- (3) The ability to effectively prevent and combat dangerous behaviors by civil and administrative legal sanctions in case of decriminalization;
- (4) The potential for the positive effect of other punishments and judicial remedies that are less severe than the death penalty in case of depenalization;
- (5) The economic - cultural - social basis;
- (6) The criminology basis;
- (7) The international integration basis.

Through a comprehensive review of the seven scientific bases of decriminalization and depenalization, the process of abolishing the death penalty will be less affected by emotional, subjective, and relevant factors. As a result, the criminal law will match the need for combatting against crimes of a country. Through its analysis, the article hopes to contribute to a different scientific perspective, thereby promoting the abolition of the death penalty in Vietnam and other countries.

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