

# REGULATIONS AND PRACTICE OF DEATH PENALTIES APPLICATION FOR MURDER IN DONG NAI, VIETNAM FROM 2016 TO 2020

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**1. Research rationale:** Murder is a crime that is specified relatively early in Vietnam's criminal legislative history. Throughout the legislative history of the Vietnam Criminal Law with several revision and amendment, the highest penalty for murder crime is the death penalty. In according to the downward trend of regulations on the death penalty, Article 123 of the Criminal Law 2015 (amended and supplemented in 2017) have many amendments. The question could be raised in this paper is whether in the practice of Vietnam the rate of the death penalty application for murder offense accounts for a worrying proportion or not?

**2. Research methodology:** This paper uses analytical and synthetic, statistical, and comparison methods, combining theory with practice. The data cited in the paper are the number of cases and murder crimes occurring in Dong Nai and the number of murder defendants subjected to the death penalty in Dong Nai in the last recent 5 years (2016 -2020).

**3. Research findings:** This paper summarizes the legislative history of the death penalty for murder, analyzes the constituent elements of murder in the current Vietnam Criminal Law. This paper then evaluates the practical application of this law and the status of applying the death penalty for murder offenders in Dong Nai province<sup>3</sup>.

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<sup>3</sup> Dong Nai Province is a province in the Southeast region of Vietnam, located east and northeast of Ho Chi Minh City (Saigon). The largest city in Đồng Nai is Biên Hòa. located adjacent to the Saigon Port and Tan Son Nhat International Airport, it offers many advantages to economic activities in the area. Its location is very important for the development of the Southern economic main hub and a junction of the South Eastern and Tây Nguyên Highland of Vietnam.

### **3.1. Vietnam's perspective on death penalty**

Death punishment is a relatively early penalty in the history of Vietnam's criminal legislation. The Criminal Law 1985 - the first Criminal Law of Vietnam - after many amendments and supplements, had 44 provisions for the death penalty. The Criminal Law 1999 had only 29 provisions on the death penalty. Before the request for judicial reform under the Party's Resolutions, the amending and supplementing Criminal Law (2009) removed the death penalty in the provisions of 8 types of crimes and separating the crime of terrorism into two types of crimes: terrorism against the people's administration (Article 84) and Terrorism (Article 230a). This Law had only 22 provisions that defined the death penalty. The maintenance of 22 crimes with the death penalty provisions of the Criminal Law 1999 also caused a controversy among researchers, practitioner and society. When applying the Criminal Law 1999 and during the drafting process of the current Criminal Law, there have been many seminars, conferences and studies on the existence of the death penalty in the penalty system and argument about whether to keep or eliminate the death penalty.

The studies have shown the theoretical and practical basis of the controversy and especially emphasized on the current international integration trend that requires a legal compatibility. In Criminal Law 2015 (amended and supplemented in 2017), the number of crimes with the death penalty was reduced to 18 crimes. Narrowing down the scope and reducing the number of crimes with the death penalty provisions and the cases imposed death penalty in Criminal Law 2015 are necessary and suitable for the country's socio-economic development. It also demonstrates the humanity of the socialist criminal law, and meets the requirements of criminal prevention and fighting as well as international integration.

*“Death penalty is the most severe penalty in the penalty system of Vietnam's criminal law. It deprives the right to life of offence, and is stipulated in the Criminal Law and applied by the Court to particularly serious offenders in*

*particularly serious cases, according to a strict procedure*"<sup>4</sup>. As a special penalty in penalty system in Criminal Law, death penalty has common properties of a penalty. Besides, as a special kind of penalty, the death penalty has its own characteristics. It is the most severe in the penalty system as it eliminates the offender forever away from social life, deprives the convicted person of the right to life - the most basic and sacred right of man. It applies only to particularly serious offenders and offenses. This penalty is intended to thoroughly prevent re-offending. It is designed not for purpose of improving or educating the criminal person as the particularly serious nature of the offense and the personal identity of the offender. The provisions and application of the death penalty aiming at "completely eliminating the possibility of committing a crime" of the offence, can deter unstable people from falling into the path of crime, at the same time encourage people to fight against the death penalty crime. That is, it has the ability to achieve many effects in general prevention. When applied, the death penalty deprives the ability to remedy mistakes in judicial activities.

According to Article 40 in Vietnam Criminal Law 2015, Death sentence is a special sentence imposed upon people committing extremely serious crimes that infringe national security, human life, drug-related crimes, corruption-related crimes, and some other extremely serious crimes defined by this Law. Life imprisonment shall not be imposed upon juvenile offenders, women who are pregnant or raising children under 36 months of age, and people from 75 years of age or older when they commit the crime or during trial.

Thus, the category of crimes with the death penalty has been narrowed down, there are humane exclusions for the subject of the death penalty. In addition, the application of the death penalty is carefully and thoroughly considered to ensure "twofold purposes: preventing people convicted of new crimes (specific prevention) and preventing others from committing crimes (general prevention)". The death penalty is only applicable when it is the last and only measure to prevent the possibility of recidivism of the convicted person and thereby educates a sense

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<sup>4</sup> *Vu Thi Thuy (2010), The death penalty in Vietnamese criminal law, National University Publisher, Ho Chi Minh City, page 19.*

of respect for laws and rules of life. Thus, when applying the death penalty for offenders prescribed by Criminal Law, it is necessary to consider comprehensively both the offense, the identity, the ability to education for reintegration, etc.

### **3.2. The murder acts are sentenced to death in accordance with the Vietnam Criminal Law 2015 (amended and supplemented in 2017)**

Murder is one of two crimes in chapter XIV (offence against the person and reputation) and is one of 18 crimes that have imposition of the death penalty in total of 317 crimes in current Criminal Law. Clause 1, Article 123 of the current Criminal Law records criminal cases subjected to the death penalty. This clause includes 16 Points which is 16 cases with aggravating frame where offenders can be subjected to the death penalty. The cases are as follows:

Murder of 02 or more people. This regulation has had some changes in comparison with that in Criminal Law 1999. Specific number of people murdered are mentioned in replacing "many people" as previous. Murdering of two or more people is the case at the same time the offender intends to illegally take away the lives of 02 or more people or consciously neglects and let the consequences of 02 or more deaths happen. It is only necessary to determine that the offender intends to kill 02 or more people and it is not necessary that 02 or more people die.

However, in cases where the offender consciously neglects and let the consequences (indirect intentional error) happen and two or more deaths occur, this offender then is defined as murder of two people. Besides, the number of people killed must be under the case specified in Article 123 of Criminal Law, the offender shall be considered to have killed 02 or more people and subjected to Point a Clause 1 Article 123 of Criminal Law. If two people die, but one person dies due to the unintentional fault of the offender, it is not considered killing two or more people, but falling into the case of violating two crimes: Murder and unintentional death. If only one person dies in the case specified in Article 123 of the Criminal Law and the other person dies from an offense who is in a state of extreme agitation or due to exceeding the legitimate defense limit, this case shall not belong to the case of killing 02 or more people.

In addition, when defining crime against murder, it is necessary to accurately identify the characteristics of the person abused by the murder offense - the object of the crime - to ensure an accurate crime definition according to provisions of law. For example, the murder behavior of a mother on his newborn will not constitute murder(Article 123), but the murder of the newborn (Article 124 of Criminal Law). Therefore, murder of two or more people will not be applicable in this case. In addition, it is also important to note that in cases where the offender mistakenly thinks the corpse is a living person and has committed acts of violation such as shooting, stabbing, slashing, ... with the sense of murder, the crime of murder is still committed. This is the case of the wrong subject. This mistake does not affect the criminal liability for the acts committed by the offender.

Murder of a person aged under 16. This provision has a change compared with the provisions in the Criminal Law 1999: the term "under of a person aged under 16" has been replaced with the previous term "children". This creates a unity and clarity in the law application. Murder of a person under the age of 16 is an offender who intentionally takes the life of a person under 16 years old.

This regulation not only stems from the perspective of protecting the country's future generations, defending the successors for building and defending the country, but also protecting those who cannot defend themselves. In order to implement this rule, the age of the victim should be accurately determined during the proceedings. However, this is not a detail that belongs to the subjective consciousness of the offender but an objective fact. Therefore, there is no need for offenders to be aware of or being forced to be aware of that the violator is a person under the age of 16. When only the fact that the offender is a person under 16 years old, the offender has been considered a crime against the person under 16 years old.

Murder of a woman with the full knowledge of her pregnancy. This is the case where the offender knows that the person he killed is a pregnant woman (regardless of the month of the month). When the victim is the lover of offender,

this crime shall be defined as murder of despicable motive and does not apply this provision.

Murder of a woman with the full knowledge of her pregnancy is a sign of subjective consciousness. The offender must know that the victim he kills is a pregnant woman. Therefore, if the murdered woman is actually pregnant but there are evidences to show that the offender does not know she is pregnant, it will not be the case of murder of a woman with the full knowledge of her pregnancy (This case shall apply Clause 2 Article 123 of Criminal Law with aggravating circumstances against a pregnant woman as specified at Point i, Clause 1, Article 52 of Criminal Crime). However, in cases where the murdered woman is practically not pregnant but the offender mistakenly believes that she is pregnant and this belief is valid, the offender remains criminally responsible for murder in case of murder of a woman with the full knowledge of her pregnancy.

Murder of a law enforcement officer in performance of his/her official duties. Murder of a law enforcement officer in performance of his/her official duties is the case where a murdered person is performing work assigned by a State agency or social organization. The assigned tasks may be natural, defined by the profession, such as doctors who are treating in hospitals, tax officers are collecting taxes, judges are adjudicating at court hearings, etc. Those who are committing citizenship purposes (such as arrest of fleeing offenders) are not on duty, but if they are killed in that activity, they may be entitled to social insurance as the person on duty and the murderer's behavior is also handled according to the case of murder of a law enforcement officer in performance of his/her official duties<sup>5</sup>. In addition, the victim killed must be on his/her duty and the offender will be considered as a murder of a law enforcement officer in performance of his/her official duties or murder of a person. If the victim is killed at another time, this case does not fall into the case of murder of a law enforcement officer in performance of his/her official duties or murder of a person. Depending on the

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<sup>5</sup> Section 1, Chapter 2 of Resolution No. 04-HDTPTANDTC / NQ dated November 29 / 1986 of the Supreme People's Court guides the application of a number of provisions in the Crime section of the Penal Code.

case it may be considered as a normal murder or another murder cases. The victim must be the person performing the duty in accordance with the law. If the victim acts contrary to the law and is killed, the person committing the murder is not the murderer who is on duty.

Murder of a person because of his/her official duties. Unlike murder of a law enforcement officer in performance of his/her official duties, victims are killed in this case when they are not on duty, but possibly before or after that duty. Specifically, offenders may commit crimes when the victim is about to be on duty to obstruct them from doing their duty, or to kill someone who did the duty for revenge or to intimidate others. Usually, the victim is the person who performed a task and thus made the offender hostile and killed him/her. For example, the offender took revenge on the proceeding officer to avoid the law. Or there are some cases where the victim has not done the assigned task in time, but the offender thinks that if the person lives, the task that they perform will cause damage to him, so he kills the victim before they perform their assigned duties.

Murder of the murderer's grandparent, parent, caregiver, or teacher. This is a treasonous murder case: the victim is someone who should have been obliged to respect the offender. This regulation stems from a tradition of good ethics, respect for the ethics of the Vietnamese people. In which, grandparents include grandparents on the father's side; grandparents on the mother's side. Parents include either natural father, mother or adoptive parents, father and mother-in-law of the offender. A nurturer is not a grandparent on both sides, father or mother, but is the person who cares, manages and educates the offender like the role of the offender's parents. They are usually have a relative to the offender such as: uncle, aunt, ... . Or they may not be a relative to the offender, but who took care of and nurtured the offender in orphanages, nursing camps.

The case of the teacher of the offender has two satisfy two conditions. Teacher is the person who has been or is teaching on a payroll basis or under a contract at an agency or organization with the function of education, training or vocational training authorized by a governmental authority. The teacher is the person who has been or is teaching offenders. In addition, it is necessary to identify

the offender who killed the teacher with the motive of treason, for the reason of their education, training and vocational training duties for the defendant, irrespective of that task is implemented or in progress, regardless of the long or short duration. If the offender commits the act of murder for another motive and the teacher does not have a certain process in teaching the offender, this case does not fall in this type of crime.

Murder committed right before or after committing a very serious crime or extremely serious crime. This is the case when the offender has committed a very serious or particularly serious crime before or after the murder. Very serious or particularly serious crimes are determined on the basis of the classification provided in Article 9 of the Criminal Law. "Immediately before" or "right after" is the case where the crime committed a crime after the completion of another crime"<sup>6</sup>. That is, other criminal acts that took place immediately before or immediately after committing murder crimes. "According to practice of the trial, it is considered as murder committed right before or after committing a very serious crime or extremely serious crime if committed earlier crime occurs at the time that is adjacent to the murder within a few hours or at the same day aa least ”<sup>7</sup>. Besides, the crime committed right before or after committing a murder crime is independent and not related to the murder crime.

Murder for the concealment of another crime. Murder for another crime is the case where, after murder, the offender commits another crime. The act of murder is the premise, the means to commit the later crime. If the murder is not committed, the offender cannot commit the following crime. Take an examples of murder and robbery. Murder for the concealment of another crime is the case where defenders commit a crime and the murder crime is committed to avoid detection and conceal a previous crime. The another example is in the case of the

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<sup>6</sup> Nguyen Duc Mai (editor), (2018), Scientific commentary of Currently Criminal Code, the National Political Truth Publishing House, Hanoi, p. 272.

<sup>7</sup> Dinh Van Que (2010), 1999 Criminal Code Comment (Criminal Section) Chapter XII: Crimes that infringe on human life, health, dignity, honor, Ho City Publishing House Ho Chi Minh City, page 19.

rape. The victim is killed to hide the crime. The person killed in this case is usually the person who has known the crime or committed the crime together with the murderer. Another crime in this case is any crime defined by the Criminal Law, regardless of whether it is a less serious crime, a serious crime, a very serious crime or a particularly serious crime. There is a relation between murder and other crimes, murder is the premise or trick to conceal the crime.

Murder for taking the victim's body parts. This murder aims at taking the victim's body part for any purpose: to research, replace or sell for the replacement of that organ, etc. That murder's purpose is illegally deprive someone's life to take the victim's body part. It is noticeable that it is not in this crime if the offender takes the victim's body part for other purposes to satisfy his/her anger.

Brutal murder. This is the case when an offense shows “no longer being human, using tricks that cause extreme pain, terror to the victim or horror in society (such as: gouge eyes, cut meat, gouge liver, cut body into pieces ...)”<sup>8</sup>. Offenders commit the above acts before the completion of crime i.e., before the victim's death. In addition, “judicial practice also considers the above acts as brutal murder when its purpose is not to commit crimes but to conceal the crime”. For example: after the murder, the offender cuts the victim's body into parts and throws at many places to destroy the traces of crime”<sup>9</sup>.

Murder by taking advantage of the murderer's profession. This is the case that the offender used his or her professional skills as a means to easily kill people and easily conceal criminals. For example, a doctor who takes advantage of medical treatment and give the victim a lethal drug; ... However, it must be clear that the offender has taken advantage of his/her profession to kill people. It is not the case when a person without that profession uses a professional method to commit the act of murder by taking advantage of another person with that

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<sup>8</sup> Section 1, chapter 2 of Resolution No. 04-HDTPTANDTC / NQ dated November 29, 1986 of the Supreme People's Court guiding the application of a number of provisions in the Criminal Law.

<sup>9</sup> Dinh Van Que (2010), 1999 Criminal Code Comment (Crime Section) Chapter XII: Crimes that infringe on people's lives, health, dignity and honor, Ho Chi Minh City General Publisher, page 22.]

profession. For example, before the nurse inject the victim, the offender swap the syringe with poison, the nurse does not know and inject the victim, causing victim to die.

Murder using a method capable of killing many people. This is a case when offenders aim at killing one or more people and use a highly dangerous method that can cause death to many others. The ability to kill many people refers to the features and effects of the means of high danger used by the offender when committing a crime that possibly cause death to many people such as: throwing grenades in crowded places, put poison into the well, etc. The consequences of using method that is likely to kill many people can be the death desired by the offender, the death of another, many deaths, and no death and offenders are still subjected to criminal liability under this regulation.

Contract killing. Contract killing is the case where offender does not want to commit the crime by his/her own and pay a mount of money or material, spiritual benefits to someone to commit crime for him/her. The offender committing directly the crime is contract killing. Before that they did not have the sense of killing others, but because they are hired, they commit killing to receive certain benefits. Hiring and killing are closely related, which is the premise of each other, if neither of the two is missing, this murder will not occur (there is a killing contractor, there is an assassin).

Murder of a gangster-like nature. This is the case in murder where “the offender clearly disregarded the rules of life, committed unruly behavior, murdered for no reason (without cause) or deliberately used tiny excuses as reasons to kill people”<sup>10</sup>. When determining murder of a gangster-like manner, there is a need to have a comprehensive view of all factors: the relationship between the offender and the victim, the offender's attitude when committing the crime, the cause leading to the offender's murder, etc and avoid one-sided consideration such as only emphasizing the offender's identity, etc.

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<sup>10</sup> Dinh Van Que (2010), Criminal Code Comment 1999 (Criminals section) Chapter XII: Crimes that infringe on human life, health, dignity, honor, Ho Chi Minh City General Publisher, page 24.

Organized murder. According to Article 17 in Criminal Law, organized crime is a form of complicity in which the accomplices cooperate closely in committing the crime. Besides, on the basis of combining with the spirit of guiding documents of authorities<sup>11</sup>, murder in an organized crime case is where two or more people participate in a murder case and there is a close connection between them and the assignment of roles and responsibilities when performing criminal acts.

Dangerous recidivism. According to the Clause 2, Article 53 BLHS in Criminal Law, A person who has a previous conviction for a deliberate very serious crime or extremely serious crime which has not been expunged deliberately commits a very serious crime or an extremely serious crime; b) A person who repeated the same offence for which the conviction has not been expunged deliberately commits another criminal offence.

Murder from despicable motives. This is the case of “murder for high selfishness, treason, treachery (for example, murder to steal a victim's spouse; murder of a lover who is pregnant with him/her to avoid responsibility; murder of a person who gives loans or help him/her to overcome difficulties and accidents in order to evade debt, etc.) ”<sup>12</sup>. In this case of crime, the intentional motivation is the mandatory sign of the criminal constituent to handle the offense. Judicial practice considers the following cases as murder for despicable motives<sup>13</sup>: Killing a spouse to freely marry another spouse, killing husband for getting married to the wife or killing his wife to get married to the victim's husband, murdering a lover with known pregnant to avoid responsibility, killing the creditors to avoid debt, killing to rob, murdering his/her benefactor.

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<sup>11</sup> Part I of Resolution No. 02- / HDTP / NQ dated November 16, 1988 of the Judicial Council of the People's Court High guidance supplement to resolution No. 02-HDTP dated 05/01/1986.

<sup>12</sup> Sub-section a, Section 1, chapter 2, Resolution No. 04-HDTPTANDTC / NQ dated November 29, 1986 of the Supreme People's Court guiding the application of Use of certain provisions in the Criminal Code.

<sup>13</sup> Dinh Van Que (2010), 1999 Criminal Code Commentary (Crime Section) Chapter XII: Crimes that commit life, human health, dignity, honor, Ho Chi Minh City General Publisher, pp. 25, 26, 27.

Murder crime has been specified relatively early in Vietnam's criminal legislative history. This early appearance stems from the State's point of view in the protection of the right to life, the right to be protected about human life. Through many times of amending, supplementing and enacting the Criminal Law, regulations on murder crime have been improved to suit each specific period of the country's situation.

When making the current Criminal Law, regulations on many crimes have changed significantly, reflecting the change in the State's assessment of the danger level of such criminal acts to society in current period. However, basically, the provisions on murder in Article 123 of the current Criminal Law did not have did not have a major change compared with that in Article 93 of the Criminal Law 1999. This reflects the strict attitude of the State towards this type of crime. Specifically, Article 123 specifies aggravating circumstances frame that is "killing two or more people" and "murdering under 16 years" instead of "killing more than one person" and "Kill the children" correspondingly in Article 93 of Criminal Law 1999. This is just a change of terminology to suit with specific qualitative characteristics in order to create clarity and consistency in the application of these two details. The nature and the danger level of the act as well as the penalty level applied to two offenses according to these two framed circumstances have not changed.

In addition, compared with the Criminal Law 1999 provisions, the current Criminal Law provisions on murder has a noticeable change that mitigate the crime circumstances. That is the provisions on the case of preparing to commit murder. Specifically, current Clause 3, Article 123 states that "Any person who makes preparation for the commitment of this offence shall face a penalty of 01 - 05 years' imprisonment". This regulation is not new and mentioned previously in the general regulations and not in the specific regulation of the Criminal Law 1999. This change in its nature is the change in level of penalty of preparation for the commitment of this offence. In Article 52 of Criminal Law 1999, the penalty for this case was no more than 20 year imprison (in the case where law provides a life or death penalty as the highest one); or no more than one half of punishment period in the regulation (in the case where law applies a term imprisonment). This means

a maximum penalty of this preparing to commit murder is 20 year imprisonment and no minimum for it.

The current general trend of the Criminal Law is to stipulate each specific law and reduce the penalty level for the case of preparing to commit a crime. Article 123 of the current Criminal Law only stipulates the penalty level for the case of preparing to commit a crime within between 1 and 5 years in prison. Thus, the penalty for the preparatory murder case has been reduced from a maximum of 20 years to a maximum of only five years in prison, which is significantly decrease. This reduction is in alignment with the general trend for the crimes at the preparatory stage specified in the current Criminal Law, not just for murder crimes.

### **3.3. Practice of application of the death penalty to murder in Dong Nai, from 2016 to 2020**

In recent years, murder acts in the whole country in general and in Dong Nai province in particular have occurred quite frequently. It can be said that this crime is a common crime in Vietnam in general and in Dong Nai province in particular. According to statistics, in 05 years (2016 - 2020), there are a total of 244 cases in Dong Nai province with 369 defendants tried for murder. Specific figures are shown in the following table:

**Table 1. Number of murder crimes and defendants for murder**

<b>STT</b>	<b>Number of murder crimes</b>	<b>Number of defendants for murder</b>
2016	58	86
2017	42	63
2018	54	83
2019	47	75
2020	43	62
<b>Total</b>	<b>244</b>	<b>369</b>

*(Source: People's Procuracy of Dong Nai province)*

As showed in the above table, in the past 5 years, the number of murder crimes cases and defendants tried for murder in Dong Nai province has fluctuated over the years. This figure decrease from 2016 to 2017 then increased from 2017 to 2018 and then dropped from 2018 to 2020. A comparison between data of 2016 and 2020 shows that the number of murder cases in Dong Nai province has a slightly decrease trend (from 58 cases in 2016 to 43 in 2020). Out of 369 defendants tried for murder in Dong Nai in the last 5 years (from 2016 to 2020), 23 were sentenced to death for murder. Thus, on average, each year in this locality there were 4.6 defendants sentenced to death for murder.

In the general trend of the world as well as in Vietnam of restricting both regulations and the application of the death penalty, this was not a small number. This shows the particularly seriousness of the offense as well as the identity of the murder offender in this locality. All murder cases are trialed at both the first instance and appellate levels due to appeals or protestation. All murder crimes declared life of death penalty at the First Instance court had the defendant's appeal. Out of 23 murder crime with death penalty, 22 death penalty defenders declared at the First Instance Court were remained the same penalty by Court of Appeal. Only one case was corrected from life to death penalty by Court of Appeal. The criminal acts of the defendants in these cases were particularly serious, showing the disregard to the law and the lives of others; the defendants all had bad identity, were incapable of renovation or reeducation, etc.

The above situation shows the trial quality of this local court is guaranteed. When applying the death penalty, the Court correctly assessed the particularly serious nature of the case, the identity of the offender, aggravating circumstances, mitigating criminal liability, the correct evidence, determined the correct offense. The First Instance Court correctly applied the legal regulations, determined the correct crime, decided the correct penalty which were commensurate with the level of danger to society of the offense.

The death penalty deprives of the right to life - the most basic, sacred right of a human. Therefore, in the process of considering the application of this penalty, the proceeding agencies should carefully consider all factors of the offense, the

nature of the danger level of the act, and the personal identity of offenders, etc., in order to correctly apply the penalty in general and the death penalty in particular, to ensure the correct and consistent application of law. However, in practice, there is not always a proper and consistent application of the death penalty in general and the death penalty in particular for murder crimes in all cases and every locality in Vietnam. In some cases, the decision to punish the offender is not really appropriate and consistent. This is demonstrated through the following examples:

The first criminal case<sup>14</sup>:

Nguyen Van T and Ms. Tran Thi S (born in 1943) were neighbors and lived next to each other. Nguyen Van T often went to Mrs. S's house to play and tease Mrs. S, so Mrs. S cursed and insulted T. Until about 9:10 pm, on December 2, 2019, when standing in front of gate of the house, he remembered the times Mrs. S cursed and insulted him, so T urgently went into his house holding a 115 cm knife and went to Mrs. S's house. When T reached the gate of Mrs. S's house, it was the lock. T climbed the fence to get inside Mrs. S's house. Mrs. S was searching for nails with a flashlight in the garden, saw T standing on the fence. She exclaimed in panic: "Oh my god" and went inside her house. T jumped down into the garden, then took the knife and chased Mrs. S to the yard, T said: "You keep talking all the time. Your damned father. I, who break, pay. Don't blame my all family". After saying that, T raised the two hands holding the knife and slashed one blow in the direction from top to bottom at the head of Mrs. S. After being slashed, Mrs. S turned her face towards her house and shouted: "My children run away", then T slashed more many blows from top to bottom on Ms. S's head causing her to fall onto the field. T took the knife inside the house and slashed one blow at the steam fan, one on the television in Mrs. S's house After that, T took

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<sup>14</sup> Judgment No. 70/2020 / HSST dated June 9, 2020 of the People's Court of Nghe An.

the knife and went out and climbed over the wall, comeback to his house.

Thus, only for a very tiny reason that was often being cursed by Mrs. Tran Thi S, the defendant brought a knife, climbed over the fence into Mrs. S's house and slashed Ms. S many times in the head, leading to the victim's death. After slashing Ms. S, the defendant still entered the house to slash the furniture in Mrs. S's house before leaving to show his aggression and disregard for the law. The defendant's acts were determined as a murder of a gangster-like nature and was subjected to Point n, Clause 1, Article 123 of the Criminal Law. In addition, at the time the defendant committed the offense, Ms. S was 76 years old, this was an aggravating circumstance against a person aged full 70 years or older as prescribed at Point i, Clause 1, Article 52 of the Criminal. The defendant was considered to have no criminal record, but the defendant's identity was bad, and had been trialed by the Court twice for property theft. At the First-Instance Court sessions, on the basis of assessment of evidences, causes, motives, purposes, nature, severity, and consequences of criminal acts; aggravating and extenuating circumstances, the defendant's identity, the trial panel announced defendant as for murder with a life sentence.

The second criminal case<sup>15</sup>:

Vu Duc Bo has been married to Ms. Nguyen Thi Hue since 2013. Around April 2019, the couple arose conflicts as Bo played around and causes a lot of debt. Ms. Hue left to live elsewhere. At around 4:00 p.m. on November 19, 2019, Bo walked to his mother-in-law, Mrs. Nguyen Thi Hoi, with a sharp-pointed knife, 20 cm long to threaten and kill Ms. Hue when Hue did not agree to comeback and live with Bo. Around 2:00 a.m. on November 20, 2019, Bo went to Mrs. Hoi's house, climbed over the hedge and went to the bathroom and waited. At about 6 o'clock of the same day, when he heard the door opening, he went out to meet Ms. Hoi, and asked Ms. Hoi to tell

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<sup>15</sup> <http://vksndthaibinh.gov.vn/Article/2619/Ban-an-tu-hinh-danh-cho-ke-giet-me-vo.html>

Hue to return the money to him. Ms. Hoi pointed at the face of Bô and asked him to be out of the house. Angrily, Bo took a knife from his pocket, stabbed her left abdomen and once in the face of Mrs. Hoi, Mrs. Hoi fell down in front of the bathroom door. After that, the Ministry sat down and continued to hold a knife and stabbed Mrs. Hop continuously, causing many injuries in the area of the head, face and neck of Mrs. Hoi. When seeing Mrs. Hoi let go of her hands, her face was bloody, he thought that she was dead, so Bo stopped stabbing, grabbed Ms. Hoi's hands and pushed her into the water tank, then turned to get a rag to wipe the blood stains, throw away Ms. Hoi's cell phone went away to avoid detection.

Thus, the defendant commits the act of murder with tiny causes and gangster-like manner (Point n, Clause 1, Article 123 of the Penal Code). The knife was a dangerous weapon that the defendant had prepared in advance to be ready to commit the offense. At first-instance court session on the basis of assessment of evidences, causes, motives, purposes, nature, severity, and consequences of criminal acts; the aggravating and extenuating circumstances, the defendant's identity, the trial panel has sentenced the defendant Vu Duc Bo to a death penalty.

The third criminal case<sup>16</sup>:

In mid-2019, Tam and Ms. C.T. knew each other and the two often went to hotels to "confide". When the two of them began to get acquainted, Tam lent Ms. C.T. 3 million dong, Mrs. T. still refused to return this amount of loan. On June 26, 2020, Tam made an appointment with Mrs. T. to come into the Đ.P. hotel. to talk clearly about the debt. Tam bought a knife to threaten Ms. T. to collect debt back. The talk did not come to an end but also pushed the conflict higher. Finally, Tam used a knife to stab Ms. T. three times in the chest and stomach, causing the victim to die on the spot. After the

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<sup>16</sup> Judgment No. 10/2021/HSST dated 22/01/2021 Dong Nai's Court.

murder, Tam calmly took out a knife to wash it, threw it away to destroy the traces of crime and took the victim's phone and sold it and then ran away. At the first instance trial, the trial panel sentenced defendant Tran Minh Tam to life imprisonment for murder.

The above three cases were similar in the murder act, causing consequences to the victim's death, stemming from the conflict, the crime of a particularly dangerous nature and level. The defendants themselves committed crimes with aggravating circumstances specified in Clause 1, Article 123 of the Criminal Law. In the first case, the defendant had more aggravating circumstances than that in the second and third cases. Attitudes after committing criminal acts in the second and the third case were similar, they all calmly erased and destroyed traces of crime, etc.

However, the punishment applied to the three defendants was different. The defendant in the second case was subjected to the death penalty while the other two defendants were only subjected to life imprisonment. This shows an inconsistency in application the death penalty to the offenders in different localities due to the different assessment of the First Instance Courts. Although both life and death penalties are two severe penalties and only applied to particularly serious crimes, it is clear that death penalty is of a more serious nature. When the death penalty is applied, the defendant is deprived of the right to live. There is no chance of reintegrating into the community.

The two different penalties applied creates a gap in the fate of two defendants. The above situation shows that, despite the decreasing trend, the death penalty in Dong Nai province in particular and the whole country in general still needs to be considered and applied properly, to ensure compliance with the law and not to cause injustice. Application must also be consistent with the nature of the danger level of the crime, effective in the fight against crime as well as unify in awareness and law application among localities. To do this, it is necessary to seriously review the trial quality for crimes with this special penalty in order to identify and provide solutions addressing mistakes, shortages and omission.

## **Conclusion**

Because of its extremely dangerous nature, murder is an early crime in the history of Vietnam's criminal legislation. Through the amendments and supplements, the provisions of the Criminal Law on murder have not changed much. Although there is a the downward trend of the death penalty regulations, murder is one of the very few crimes that is still applied a death penalty regulation on the offenders. Current Clause 1 Article 123 of the Criminal Law specifies the application of the death penalty for 16 types of cases. These regulations are so relatively clear, specific that they can facilitate the correct and consistent application in practice. Dong Nai has a relatively large number of murder crimes in comparison to the whole country. The practice of death penalty application to murder cases in this province in the past 5 years (2016 - 2020) partly reflects the application of regulations on the death penalty for murder crime at national scale. In particular, besides the good results, there are also problems when applying the regulations, namely inconsistent application of this special penalty in the cases of murder crimes over different provinces. This requires the efforts of legal proceedings agencies and authorities in considering and applying appropriately in compliance with the provisions of the law to make this application to be in accordance with the nature of the danger level of the crime, effective in the fight against crime and ensures consistency in the awareness and application of the law among localities./.

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