

## **LIFE IMPRISONMENT AND RECOMMENDATION TO MEET JUSTICE REFORM REQUIREMENTS IN VIETNAM**

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### **1. Introduction**

*Life imprisonment is a type of punishment that has a long-standing position in the system of punishment of countries. Along with the development of international perceptions, the situation of serious transnational crime, as well as the legal tradition and socio-economic situation of each country, especially the concepts of humanitarianism of criminal law; views on the protection of human rights in criminal law; in terms of the purpose and role of punishment in the system of criminal liability measures, the provisions and practices of the world's life imprisonment have also changed significantly in line with the tendency to use life imprisonment as an alternative to the death penalty; Narrowing the life sentence... Such changes in law as well as in practice occur due to a variety of reasons relating to awareness, leading to changes in the country's criminal policy.*

*As a member of the world community and according to the general trend, Vietnam has also renewed penal and penal policy in general, and the policy of life imprisonment in particular. Therefore, the systematization and confirmation of the theoretical basis, analysis and evaluation of the law and practice, in order to make recommendations to improve the criminal law in accordance with the Judicial Reform which is being carried out in Vietnam, it is very necessary to be in line with the inevitable development trend in the world.*

### **2. Some conceptions on life imprisonment**

#### **2.1. Concept and socio-legal nature of life imprisonment**

*In accordance with the name of the penalty (life imprisonment), there is a common consistency within the framework of the legal sciences between nations and on the global scale as well that this penalty shall be the strictest punishment recorded in national penalty system right after the death penalty. Therefore, pursuant to the legal regulations, legal sciences announce that life imprisonment shall be the penalty applied for a convicted person who would be sentenced to life*

*in prison or until his/ her death<sup>1</sup>. The concept of life imprisonment seems to be uniformly perceived and is rarely mentioned or debated in legal sciences around the world.*

*However, the aspects seem to be different when studying the nature of life imprisonment on the basis of specific and comprehensive research on the legal provisions of some countries on this penalty and the enforcement of this penalty in practice.*

*From the legal point of view, the Penal Code of Vietnam construes life imprisonment as an indefinite imprisonment<sup>2</sup>. There are 2 approaches considering this definition of indefinite imprisonment:*

*- In the first place, regarding combination with the term of life imprisonment, it is thought that indefinite imprisonment interprets a lifelong imprisonment. However, from this point of view, the definition of “lifelong” is not absolute, for the fact that a person suffering life imprisonment may not have to serve the sentence for life, instead they may have the term reduced provided that they are in good rehabilitation<sup>3</sup>. It is considered that indefinite imprisonment and decrease in term of sentence, which results in a certain period of imprisonment, are issued under different provisions under Penal Code.*

*- On the other hand, others believe that the essence of life imprisonment is one whose period cannot be identified<sup>4</sup>. Persons convicted and sentenced to life imprisonment shall be released when purposes concerning this punishment (especially in case of preventing offenders from committing new crimes and re-educating offenders to be decent citizens) are actually implemented. However, in the light of the fact that this punishment is prescribed for felonies aiming at meeting principles, which should be in accordance with the nature and level of danger of the crime committed<sup>5</sup>. Therefore, it is evident that the Penal Code regulates releasing prisoners from life imprisonment only after they have served for a certain period of time.*

*The verification on the nature of life imprisonment is not a life-lasting punishment in prison, but rather an imprisonment penalty that the Court , when*

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<sup>1</sup> *Textbook of Criminal Law, People's Public Security Publishing House, 2019, page 299; Institute of Legal Science, Scientific Commentary on the Criminal Code, Judicial Publishing House, Hanoi 2019, page 120.*

<sup>2</sup> *Article 34, Viet Nam Penal Code of 1999; Article 39 Viet Nam Penal Code of 2015.*

<sup>3</sup> *Law jurisprudence dictionary, Judicial publisher, Ha Noi, 2006, page 824.*

<sup>4</sup> *And this is also the purpose of the author of this Report.*

<sup>5</sup> *Markus D. Dubber and Tatjana Hornle, Criminal Law, A Comparative Approach, Oxford University Press, 2014, p. 9...*

*applies, does not point out a specific time limit for the convict to consciously self-educate and re-educate; and when that prisoner becomes a good-behaving and useful person and be able to reintegrate into the community well... he shall be exempted from continuing to serve the prison sentence in accordance with the principles and purposes of the punishment: Crime prevention - rehabilitation - community reintegration; at the same time, it shall minimize the negative social impacts caused by serving prison sentences<sup>6</sup>. Moreover, in our point of view, such awareness and application of life imprisonment shall create great motivation for the convicted in self-education and re-education in serving the sentence<sup>7</sup>.*

*In addition, in the concept of legislators in many countries, life imprisonment is seen as a kind of alternative punishment for fix-term imprisonment<sup>8</sup>. Among the countries that have abolished the death penalty, life imprisonment is applied for the most dangerous crimes such as murder, drug crimes or genocide...<sup>9</sup> In the Russian Criminal Code, the previous versions had no life imprisonment. However, since the abolishment of the death penalty, life imprisonment was enforced to replace the punishment for crimes that the previous versions of the Criminal Code sentenced death penalty. According to the Criminal Code of countries that still maintain the death penalty, in case a convicted person sentenced to death was granted a pardon, then the penalty shall be replaced by a life imprisonment<sup>10</sup>. In particular, pursuant to the Criminal Code of China, in the event that a person sentenced to death receiving a conditional sentence adjournment by the Court for 2 years, without violating the prescribed conditions, the death penalty shall be replaced by life imprisonment or imprisonment for a term of from 15 to 20 years...<sup>11</sup>*

## **2.2. The purpose of life imprisonment in relation to the general purpose punishments and criminal policies**

*The concept of the purpose of punishment has always caused fierce debate not only in the theory of punishment but also in criminal legislative practice. Along*

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<sup>6</sup> Markus D. Dubber and Tatjana Hornle, *Criminal Law, A Comparative Approach*, Oxford University Press, 2014, p.15.

<sup>7</sup> *Reality in Vietnam shows that 100% of people sentenced to life imprisonment are transferred to a fixed-term prison sentence and then released early.*

<sup>8</sup> *Law Dictionary, Judicial Publishing House, Hanoi, 2006, page 823*

<sup>9</sup> Kevin Jon Heller and Markus D. Dabber, *The handbook of Comparative criminal law*, An Imprint of Stanford University Press Stanford, California, 2011.

<sup>10</sup> Kevin Jon Heller and Markus D. Dabber, *The handbook of Comparative criminal law*, An Imprint of Stanford University Press Stanford, California, 2011, p. 419 - 432.

<sup>11</sup> Kevin Jon Heller and Markus D. Dabber, *The handbook of Comparative criminal law*, An Imprint of Stanford University Press Stanford, California, 2011, p. 159.

*with the development of society, democracy, awareness of crime prevention as well as protecting community interest including human rights, the concept of punishment purpose is constantly changing.*

*In feudal and slave-possessing states, revenge was considered as the only purpose of punishment to deter offenders or others. Therefore, the punishment for revenge and deterrence was prescribed very strictly; punishment such as death penalty, imprisonment with harsh regimes, punishments that causes physical or psychological pain to the convicted were highly regarded. In addition to the type of punishment, the method of punishing was also fierce. For example, the death penalty is executed by guillotine or mutilation; and people who was sentenced to imprisonment are executed in prisons with harsh enforcement.*

*Along with the development of society, democratic and benevolent social regime were formed, the purpose of punishment was also realized more advanced, not only serve the purpose of punishing crimes, but also appreciate the prevention of crime, the rehabilitation of the violated social relations and the re-education and community reintegration of the convicts.*

*Currently, the trend of democratizing and humanizing criminal law, in general, and the punishment, in particular, has been confirmed in the world legal science and reflected in national law as well. Protecting public interests, preventing atrocities is generally the purpose of punishment. Besides, the purpose of rehabilitation, community reintegration... is also highly unified<sup>12</sup>.*

*However, the doctrines of punishment purposes have not yet agreed on the other purposes of punishment such as deterrence, revenge, etc. In particular, Japanese scientists and legislators have affirmed that compensation is not the purpose of punishment<sup>13</sup>. In German Criminal Law, in addition to the purposes mentioned, the impact of the sentence on the defender's future life in society also has to be considered<sup>14</sup>.*

*The history of developing awareness about the purpose of the above punishment, although maybe later, is also quite fully expressed in the Vietnamese Criminal Law. The purpose of punishing and preventing crimes, forcing offenders to*

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<sup>12</sup> Kevin Jon Heller and Markus D. Dabber, *The handbook of Comparative criminal law*, An Imprint of Stanford University Press Stanford, California, 2011, p. 55 - 56, 102 - 122, 258, 399, 419...; Markus D. Dubber and Tatjana Hornle, *Criminal Law, A Comparative Approach*, Oxford University Press, 2014, p. 11 - 12.

<sup>13</sup> Kevin Jon Heller and Markus D. Dabber, *The handbook of Comparative criminal law*, An Imprint of Stanford University Press Stanford, California, 2011, p. 399.

<sup>14</sup> Article 46 General Part of the German Federal Penal Code.

*pay for their crimes is evident in the criminal law of the feudal period. The purpose of punishment, education, and crime prevention, though expressed differently, is present in the criminal law of Vietnam since the Democratic Republic of Vietnam was formed until now. At the same time, along with the purpose of crime prevention and prevention education, the Criminal Codes 1985, 1999, and 2015 also supplement education and general prevention, which means educating others in crime prevention<sup>15</sup>.*

*In Vietnamese criminal law science, criminologists all agree that the purpose of punishment is to educate and rehabilitate offenders to ensure that offenders do not commit new crimes and become useful people to society (private prevention), educating others not to commit crimes (general prevention)<sup>16</sup>. The controversy revolves around whether punishment is considered the purpose of chastisement or not: 1/ The view that the purpose of punishment is only education and prevention. Those who hold this view believe that the punishment is the content and that the State uses sanctions (coercive measures) to achieve the purpose of education and prevention; punishment is not the end of punishment itself<sup>17</sup>; 2/ The view that along with education and prevention, punishment also has the purpose of chastisement<sup>18</sup>; 3/ The neutral view holds that the main purpose of punishment is private and general preventive education. At the same time, punishment is not the main goal, but it is the purpose of the stage of punishment, the means to achieve the main goal<sup>19</sup>. In addition to the three main groups of views mentioned above, there are also authors who believe that, in addition to the defined purposes, punishment is indispensable for the purpose of protecting social formation, maintaining fairness, and justice<sup>20</sup>.*

*We totally support the opinion that the purpose of the penalty is crime prevention education for offenders and for the community. Chastisement is a must-*

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<sup>15</sup> Article 20 Penal Code 1985; Article 27 Penal Code 1999; Article 31 Penal Code 2015

<sup>16</sup> Nguyen Duc Tuan and authors, *Penalty in the Criminal Law of Vietnam*, Legal Publishing house, 1995

<sup>17</sup> Tran Van Do, *Thematic number on punishment*, Institute of Legal Sciences, Ministry of Justice, 1994; Assoc.Prof.Dr. Tran Duy Phuong, Dr.Dinh The Hung (co-authors), *In-depth commentary on the Penal Code 2015*, Justice Publishing house, 2020. page. 213-214

<sup>18</sup> Institute of Legal Sciences, Ministry of Justice, *Jurisprudence Dictionary*, Justice Publishing house, 2006. page 544; Criminal and Administrative Law Department, *Comments on Criminal Code 2015*, Judicial Publishing House, 2018, pages 126 - 127

<sup>19</sup> Nguyen Ngoc Hoa, *The Purpose of Punishment*, *Journal of Jurisprudence*, No. 1/1999

<sup>20</sup> Criminal and Administrative Law Department, *Penal Code Commentary 2015*, Judiciary Publishing House, 2018, pp.126 - 127; Prof. Dr. Le Cam, *75 years of formation and development of Vietnam's criminal legal system and orientation for further improvement*, National Truth Political Publishing House, 2020, page 427.

have attribute of penalty, a typical educational method of criminal law for offenders as well as for the community.

Life imprisonment is the most severe punishment in the penal system in many countries<sup>21</sup>. The purpose of life imprisonment is not outside the general purpose of punishment. It is education, crime prevention. However, life imprisonment is prescribed and applied to particularly serious crimes on the principle that the punishment is commensurate with the nature and danger of the crime, so the severity of life imprisonment is more general education, deterrence, and prevention services; Punishment also helps to prevent the continuation of the crime and threaten the offender in order not commit new crime.

### **3. Vietnam's criminal law on life imprisonment**

#### **3.1. Overview of life imprisonment in the history of Vietnamese criminal law**

3.1.1. Under the feudalism system Vietnam's criminal law stipulates a penalty system consisting of 5 main penalties: rod punishment, mace punishment, corporal punishment, banished punishment and death penalty. Banished punishment is the punishment of eternal exile in a faraway place. This type of punishment ranks fourth in the ancient penalty scale and is ranked immediately after the death penalty.

By the middle of the nineteenth century, Vietnam was a colony of France. The penalty system and types of penalties in the criminal law of Vietnam in this period are provided with main penalties and additional penalties. In particular, the main punishments include the death penalty, life imprisonment, deportation, limited penal servitude.

Life imprisonment is a punishment applied to cases of serious crimes but not yet to the death penalty. Convicts subject to this punishment were deprived of their liberty and required to do hard labor for the rest of their lives. Thus, life imprisonment began to be prescribed in the penal system of Vietnam's Criminal Law with the name: life imprisonment<sup>22</sup>.

3.1.2. From 1945 to 1985, after the birth of the Democratic Republic of

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<sup>21</sup> Criminal and Administrative Law Department, Penal Code Commentary 2015, Judiciary Publishing House, 2018, pp.126 - 127; Prof. Dr. Le Cam, 75 years of formation and development of Vietnam's criminal legal system and orientation for further improvement, National Truth Political Publishing House, 2020, page 427. Although the death penalty still exists in Vietnam, it is considered by criminal law scientists as a special and temporary case. But anyway, we still think that at present, life imprisonment is just a severe punishment after the death penalty.

<sup>22</sup> Articles 2 - 5, 11 - 17, 27 - 31 of the Bac Ky Penal Code; Articles 4 - 43 of the Trung Ky Penal Code; Articles 6 - 36 Penal Code (Nam Ky Penal Code)

*Vietnam, Vietnam's criminal law went through different stages of development. Whereby:*

*"Life imprisonment is also a punishment with a special nature. Like the death penalty, it can be applied to some particularly serious crimes"<sup>23</sup>. Life imprisonment does not apply to juvenile offenders<sup>24</sup>. For inmates who are sentenced to life in prison for good re-education but have to spend 5 years in prison before they can be considered for sentence reduction; the first life sentence was reduced to 20 years in prison, but despite being reduced many times, the prisoner had to spend at least 12 years in prison. For those aged 60 and over who have just been sentenced to life in prison, the number of years in prison can be reduced to less than 10 years, but cannot be reduced to less than 5 years<sup>25</sup>.*

*Crimes that can be sentenced to life in prison include counter-revolutionary crimes, plundering, harassing people during hostilities, premeditated murder, terrorism...<sup>26</sup> Moreover, in this period, committing the crime of causing a traffic accident (unintentional crime) causing particularly serious consequences can also be sentenced to life imprisonment or death penalty<sup>27</sup>.*

*3.1.3. The Criminal Code 1985 and the Criminal Code 1999 basically inherited the legal provisions on penalties in general and life imprisonment in particular. The purpose of punishment is defined as a combination of punishment and education, prevention<sup>28</sup>. Life imprisonment is the main punishment in the penal system<sup>29</sup>.*

*In essence, life imprisonment is considered as an indefinite prison sentence that is applied to offenders in particularly serious cases (Criminal Code 1985) or particularly serious crimes (Criminal Code 1999) but not to the point of death penalty. Life imprisonment does not apply to juvenile offenders<sup>30</sup>. Therefore, life imprisonment is mainly provided for in optional sanctions with fixed-term imprisonment and the death penalty.*

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<sup>23</sup>) Circular No. 498-P4 dated October 31, 1946 of the Ministry of Justice

<sup>24</sup> Summary and guidance No. 329-HS2 dated February 11, 1967 of the Supreme People's Court on the way to adjudicate rape and some other sexual crimes.

<sup>25</sup> Circular No. 73-TTg/LB dated 11/8/1959 of the Inter-Ministry of Justice, Public Security, Central Prosecutor's Office, Supreme People's Court.

<sup>26</sup> Decree No. 133-SL of the President dated January 20, 1953; Circular No. 60-TT dated May 23, 1947 of the inter-ministerial defense and justice; Decree No. 12-SL dated 12/3/1949; Circular No. 442/TTg dated January 19, 1955 of the Prime Minister; Ordinance on punishment of counter-revolutionary crimes of October 30, 1967...

<sup>27</sup> Circular No.556/TTg dated 29/6/1955 of Prime Minister

<sup>28</sup> Article 20, Penal Code 1985, Article 27 Penal Code 1999

<sup>29</sup> Article 21 Penal Code 1985, Article 28 Penal Code 1999

<sup>30</sup> Article 26 Penal Code 1985, Article 34 Penal Code 1999

*Convicts sentenced to life imprisonment may be considered to reduce their punishment; reduction for the first time after serving the penalty for 10 years and reduced to 20 years; although they may be reduced many times, they must serve at least 15 years of imprisonment or the first time they have served the penalty for 12 years and reduced to 30 years; although it is reduced many times, but must serve at least 20 years in prison<sup>31</sup>.*

### **3.2. Provisions on the penalty of life imprisonment in the 2015 Penal Code**

*The concept and condition for applying life imprisonment of the 1999 Penal Code are inherited in the 2015 Penal Code. Accordingly, life imprisonment is an indefinite prison sentence applied to people who commit particularly serious crimes, but not yet to the extent of being sentenced to death. Life imprisonment does not apply to persons under 18 years of age<sup>32</sup>.*

*Simultaneously, the 2015 Penal Code has inherited and developed with a split in the reduction and exemption of life imprisonment. For a person who commits a crime sentenced to life imprisonment, he/she may only be considered for the first time reduction to 30 years in prison when he has actually served the sentence for 12 years; and even though it is reduced many times, it still has to ensure the execution of 20 years in prison. As for those who commit many crimes and are sentenced to life imprisonment, they may only be considered for the first time reduction to 30 years in prison when they have actually served their sentences for 15 years; and despite being reduced many times, they still have to ensure to serve 25 years in prison<sup>33</sup>.*

*At the same time, the 2015 Penal Code also added a new provision for conditional prison release. According to this regulation, a person sentenced to life imprisonment who commits a crime for the first time, has a good sense of reform, has made great progress, has a clear place of residence, has completed serving additional penalties and other decisions, can be released early after serving at least 15 years in prison...<sup>34</sup>*

*Through researching the provisions on life imprisonment in the history of criminal law in Vietnam, some comments can be made as follows:*

*- Life imprisonment is always present in the Vietnamese penal system;*

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<sup>31</sup> Article 49 Penal Code 1985, Article 58 Penal Code 1999

<sup>32</sup> Article 39, Penal Code 2015

<sup>33</sup> Article 63, Penal Code 2015

<sup>34</sup> Article 66, Penal Code 2015



- Life imprisonment is prescribed and applied to particularly serious crimes, but with the general trend of narrowing the scope of crimes in the section of crimes<sup>35</sup>. In particular, life imprisonment is annulled for unintentional crimes, for some crimes of property infringement, economic crimes...;

- In the criminal law, there is a tendency to tighten the conditions for reducing the term of life imprisonment: the minimum period of serving a prison sentence to be considered for reduction for the first time (5 years before 1985, 10 years under the 1985 Penal Code, 12 years under the 1999 Penal Code and 15 years under the 2015 Penal Code); trend of increasing the minimum term of imprisonment upon release (10 years before 1985, 15 years under the Penal Code 1985, 20 years under the 1999 Penal Code and 20 or 25 years under the 2015 Penal Code)...;

- In the 2015 Criminal Code, the Code was promulgated in the Judicial Reform, Building the Rule of Law (The Rule of Law), after the 2013 Constitution, the trend of reducing death penalty, reducing sanctions life imprisonment is quite obvious. The policy of division of criminal responsibility in the regulations on life imprisonment is very clear in the regulations on reduction and exemption from punishment, in the early release of prison...

- However, in our opinion, there are still some issues to discuss about the provisions of the 2015 Penal Code on life imprisonment:

First, for a long time, the concept of the purpose of punishment has not changed<sup>36</sup>. The notion that punishment is the main goal has limited the role of education, rehabilitation and reintegration purposes; to fierceize the penalty system, limit humanitarian measures, and attach importance to the prevention of punishment. This conception of the purpose of punishment has greatly influenced the penalty system of Vietnam.

Second, only people under 18 years old in the group of disadvantaged people commit crimes not subject to life imprisonment. Other groups of people such as the elderly, women... are still subject to life imprisonment;

Third, there is no distinction in the conditions for applying life imprisonment with the death penalty (for particularly serious offenders) although the two

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<sup>35</sup> Before the promulgation of the first Penal Code, 1985, in addition to cases of particularly serious crimes, life imprisonment could apply to unintentional crimes. And in the Penal Codes 1985, 1999, 2015 the rate of crimes punishable by life imprisonment with the crimes specified: the 1985 Penal Code is 18.18% (38/209 crimes); Penal Code 1999 is 21.34% (57/267 crimes); The 2015 Penal Code is 17.7% (56/315 crimes).

<sup>36</sup> Article 31 of the 2015 Penal Code "Punishment is not only to punish, but also to educate...". Punishing (state coercive measure) is an attribute of punishment that has been affirmed in Article 30 of the Penal Code.

*penalties are very different in nature and severity. Even, the Code stipulates that life imprisonment will be applied to those convicted when "not yet to the point of being sentenced to death"<sup>37</sup>; leads to the perception in practice that when deciding the penalty for a sanctioned crime to choose between life imprisonment and capital punishment, the Court must first think about applying the death penalty, and if that person is not enough to be sentenced to death before being sentenced to life in prison. Similar provisions and perceptions are contrary to the humanitarian principles of the Criminal Law;*

*Fourth, the regulation of the maximum prison sentence is too high (30 years), tightening conditions for reduction and exemption from serving life imprisonment (increasing the minimum term to be considered and reduced for the first time, increasing the actual term has serving prison sentences...) has limited motivation for re-education of convicts, especially the sentenced elderly. Eg; when a person around 60 years old is sentenced to life imprisonment for many crimes, even though he/she is reformed and well educated, he/she must still serve a prison sentence of at least 25 years. This has extinguished the convict's hope of having a good education re-education in order to be released.*

## **5. Proposal to improve regulations on life imprisonment in Vietnam's criminal law**

### **5.1. Criminal policy in the Judicial Reform Strategy**

*Vietnam is carrying out a criminal policy that "Emphasizing the improvement of criminal policies and judicial procedures, promotes the effectiveness of prevention and the benevolent in handling offenders. Reducing prison sentences, expands the application of fines, non-custodial reform penalties for some types of crimes, limits the application of the death penalty according to flavor, only apply to a few types of particularly serious crimes. Reducing the maximum penalty frame which is too high in some types of crimes"<sup>38</sup>.*

*The above criminal policy is completely accurate, progressive, and approaches the viewpoints of criminal law in general and the penalty system in particular; including life imprisonment. The above criminal policy clearly represents the purpose of education, prevention, rehabilitation and reintegration of punishment; puts out specific basic orientations for the development of the penalty system in Vietnam:*

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<sup>37</sup> Article 39, Penal Code 2015

<sup>38</sup> Resolution No. 49-NQ/TW dated June 2, 2005 of the Politburo of the Communist Party of Vietnam "On the Strategy of Judicial Reform to 2020".

- 1) *Limit the application of the death penalty;*
- 2) *Reduction of prison sentences, including fixed-term imprisonment and life imprisonment;*
- 3) *Strengthen non-custodial penalty, especially penalties such as Non-custodial rehabilitation, fines;*
- 4) *Reducing excessively high penalties, i.e. reducing the death penalty, life imprisonment, and term imprisonment at a high level in the sanctions of the criminal regulations...*

*For this policy come to life, it needs to be:*

- 1) *Proper and adequate awareness in the criminal legislative team, the criminal law application team and the criminal judgment enforcement team;*
- 2) *Institutionalization in different institutions of criminal law and*
- 3) *Ensure implementation in practice through criminal law application and penalty enforcement.*

*In which, the improvement of the criminal law on penalty is one of the important contents of the implementation of the defined criminal policy.*

## **5.2. Some recommendations to improve regulations on life imprisonment**

*On the basis of researching a number of important theoretical issues on penalty mentioned above, evaluate the provisions of the criminal law of Vietnam over time and especially the provisions of the current 2015 Penal Code, referring to the criminal laws of some countries and thoroughly grasping the new criminal policy, we find it necessary to complete the Vietnamese Penal Code according to the following basic orientations:*

*- Firstly, determine accurately and reasonably the purpose of the penalty. Punishing is an attribute of punishment that has been expressed in the legal concept of punishment<sup>39</sup>. Legislators desire that by depriving or restricting the rights and interests of the convicted person, thereby achieving the purpose of preventing and preventing crime. Punishing shall not be the nature purpose of punishment*

*Penalty has the purposes of preventing crime, protecting the interests of individuals, organizations and the community; rehabilitation and reintegration into the community of offenders; specific prevention education and general prevention*

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<sup>39</sup> Article 30 Penal Code 2015: *“Punishment is the most severe coercive measure of the state...”*.

*education. In short, the purpose of the penalty is particular prevention education and general prevention education.*

*- Secondly, as we analyzed, from a theoretical as well as a practical point of view, the legal nature of life imprisonment is an indefinite term (indefinite prison). Therefore, it is necessary to change the name life imprisonment to unfixed-term imprisonment so that the name accurately reflects the nature of this penalty, ensure the name is consistent with the content of the penalty; the name of this penalty is consistent with the name of the fixed-term imprisonment penalty in the penalty system of Vietnam as well as other countries,*

*- Thirdly, complete the conditions for the application of life imprisonment (indefinite term imprisonment). In the system of main penalties prescribed by the Vietnamese criminal law, life imprisonment is more severe than fixed-term imprisonment and lighter than death penalty. In the sanctions of crimes that have the death penalty, this penalty is provided with an alternative with life imprisonment. Therefore, in principle, when deciding penalties for offenders in these cases, the Court must think about life imprisonment first; and when the application of life imprisonment cannot meet the requirements of crime prevention, the Court applies the death penalty,*

*Therefore, it is unreasonable for the legislator to prescribe the conditions for applying life imprisonment similar to those for applying the death penalty (applied in cases of particularly serious crimes)<sup>40</sup> without the distinction of application conditions. It is necessary to improve the criminal law in the direction of:*

*1) Life imprisonment is applied to people who commit particularly serious crimes intentionally; may consider so that in addition to people under 18 years old, life imprisonment also does not apply to some other vulnerable people such as women, elderly people aged 70 years or older.*

*2) The death penalty is applied to those who commit particularly serious crimes on purpose, with many aggravating circumstances and the offenders are no longer capable of re-education.*

*- Fourthly, complete the regulations on exemption and reduction for life imprisonment (prison without a term) in line with Vietnam's criminal policy of humanity, charity, and rehabilitative purposes. The trend of stricterization of the*

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<sup>40</sup> Article 33, Article 34 Penal Code 2015

*conditions and the time limit for serving the penalty for reducing the term of serving a life imprisonment sentence needs to be overcome.*

*In our opinion, a person sentenced to life imprisonment who has served a prison sentence of at least 10 years and has advanced re-education education can consider reducing the first time serving sentence to 20 years; and is considered for reduction many times, but must serve a minimum prison sentence of 20 years. In special cases, the respective term may be 7 years and 15 years. Persons sentenced to life imprisonment may be released from prison ahead of time after they have been considered for transfer to prison for a definite term and have served at least 15 years of imprisonment.*

*- Fifthly, completing sanctions for a number of specific crimes to meet the criminal policy of reducing prison sentences in Vietnam. In our opinion, life imprisonment should only be applied to some groups of criminals: 1/ Crimes of infringing upon national security; 2/ crimes of genocide, against humanity; 3/ the crime of murder; 4/ drug-related crimes; 5/ some crimes of infringing upon property (robbing property, kidnapping to appropriate property); 6/ death penalty cases are commutation; 7/ some other crimes (corruption crimes such as embezzlement, taking bribes; some crimes of infringing upon public safety...).*

## **6. Conclusion**

*Life imprisonment in Vietnam is researched on the basis of theoretical awareness; analyze and evaluate the provisions of the criminal law, compare and refer to the laws of some countries and apply practice to make some recommendations to improve the current criminal law on life imprisonment.*

*The improvement of the criminal law on life imprisonment is carried out in accordance with the trend of humanizing the criminal law, in accordance with the criminal policy towards good, and attaching importance to the prevention and reduction of prison sentences in Vietnam.*

*The completed content includes the name of the penalty, the conditions for applying the life imprisonment penalty, softening the conditions for exemption and reduction of the serving of life imprisonment, and reducing the sanction with life imprisonment for crimes specific offense.*

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