



## Capital Punishment in Vietnam, a Study from the Perspective of Traditional and Modern Values

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**Abstract.** Punishment in criminal law aims to penalize criminals and to general education and crime prevention. Death penalty is the highest punishment of the State for criminals. Historically, death penalty was a state's tool to oppress actions against the government, to ensure the political system, and to protect individuals' life and behaviors causing particularly serious consequences for society. At the present, along with the trend of civilization and humanity, death penalty in Vietnamese criminal law is still valid but to be narrowed down and decreased in enforcement with the forms in which it becomes more humanitarian, in line with Vietnam's trend of opening and international integration.

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### 1. Introduction

For decades, scholars, lawmakers and policymakers, law-making agencies and people in many countries and regions around the world have had heated discussions on the topic of if we should maintain the death sentence in the criminal legal system or not. Opinions are divided into two groups: firstly, calling for restriction to apply, towards eliminating the penalty; secondly, demanding to continue maintaining or restoring the removed death sentence. In our study, we would like to exchange on death sentence from the perspective of the traditional conception of Asian people in general and Vietnamese people in particular and issues raised in currently completing Vietnamese criminal law.

### 2. Death Sentence is an Inevitable History of Human Society

Generally, punishment in criminal law in the world aims to two main purposes, firstly, punishing the criminals; secondly, educating, particularly and generally preventing. For the death sentence, the main purpose is to punish the offenders while the other of educating the offender is no longer set because of depriving life of the offender, but only for the purpose of general prevention and education. It shows the most severe handling of the State for offenders.

In every certain historical time of human society, the law is developed on universal standards.

That universality, however, itself contains greatly various contradictions and differences because of depending on the political, economic, cultural and social conditions of each nation and being dominated by international factors. On the same issue, Westerners may produce different views and judgments from Easterners'. There are circumstances, facts, and behaviors that are considered as normal by Westerners while as immoral to be condemned by Easterners. We must accept a world existing on the diversity of opinions and differences in many issues, including cultural and legal values. So, how is the value or social meaning of the death sentence reflected in the opinion of Easterners?

The concept of value in this article does not imply expressing material assessment in terms of reference to monetary units, although it does not completely deny its materiality. The value of the death sentence is set in the context of social mobilization, *reflecting its meaning for the existence and development of society in general*.

Historically, it can be seen that the way of organizing the life and managing society of Easterners has many differences with Westerners'. In the East, the phenomenon of power concentration appeared very early. The popular traditional state regime in the East is centralization of power; although the situation of decentralization to rule as a feud happened, it was only a particular phenomenon. The community awareness of the Easterners requires the use of strong measures to maintain



national unity and strict social management, creating a strong anti-aggression power. It is not a coincidence that Dinh Tien Hoang, the founder of Dinh dynasty, one of the first dynasties that prepared the foundation for the development of Dai Viet later had to use such devastating measures as throwing offenders in a cauldron of boiling oil or leaving them in a cage to feed the beast of death sentence as ways of popular punishment to suppress offenders.

The death sentence has appeared in Vietnamese history since the founding of the nation. Many myths, legends reflecting on the process of developing and protecting by Vietnamese people have mentioned the execution of death sentence for guilty people since the Magic crossbow legend. Since 938, Vietnamese country - nation has been officially independent until the present time, despite many historical events and changes of dynasties, various political and social regimes, the death sentence is still maintained in spite of gradually declining trend, but it has not been removed from the punishment system, reflecting the consistency of criminal policy in general and the death sentence in particular. The death sentence has established its position in Vietnamese criminal law in particular and social life in general with values and counter-values generally recognized.

The counter value of the death sentence is very easy to realize: in history, there have been periods when it was used as a tool to repress classes. Vietnamese kings and lords did not hesitate to arrest, imprison, and murder those opposing the interests of the ruling class, of families and individual of kings and lords. The fiercer the class struggle, the more popular the death sentence is used and the level of cruelty and barbarism in enforcing the punishment also increases. The application of the death sentence, in this case, is a political terror, carried out by the civil service. Typically, after Tran dynasty usurped the throne from Ly dynasty, "in August of Nham Thin lunar year, under posthumous name of Kien Trung 8<sup>th</sup> (1232) of King Thai Tong, Thu Do killed all people in Ly dynasty's royal family (by burying alive more than 300 people in a collective hole)". The death sentence was not enforced on a strict legal basis but in many cases, it was "act first and report afterward" (beheading first, reporting later as in the feudal period of Vietnam)".

However, the value of the death sentence has shown its positivity. This is an objective requirement to maintain order and a stable political institution. It should be noted that, under the conditions of Vietnamese feudalism, the management apparatus of the central government was small; the economic basis was self-sufficing, people rarely left their villages; the thought of ruling as a feud, localism was more likely to rise to threaten the central government and national unity. Therefore, the use of violence to maintain social order and state power was necessary and inevitable. The issue of violence is always dualistic: positive and negative. In

order to minimize the negative aspect, the use of violence should be limited and controlled within certain frameworks including national law.

The recognition of the death sentence in the feudal punishment system confirmed its certainty as well as meaning for the contemporary feudal society while reflecting the idea of limiting the arbitrarily applying this punishment to certain types of objects and case scope. In the feudal period, state laws and violence are two different social phenomena. When violence is regulated by law, it is legal and reasonable one.

The social value of the death sentence, in fact, is expanded from objective reality to the spiritual - emotional area, gradually moving into people's consciousness. Objectively, in history as well as the current time, the death sentence can be considered as one of the measures to maintain social stability, protect the common interests of the community, the state and protect people, punish those with, particularly serious offenses, bringing justice to society. The death sentence is also commonly applied for murder crimes with the philosophy of "paying retributive compensation for a murder" to promote the task of protecting the right to live of human. Due to the geographic position, population, territorial shape, economic development and the relationship of Vietnam with other countries in the world, in general, the geopolitical factor of Vietnam has specific characteristics which formed the cultural and legal tradition of the country. An independent millennium is also a millennium to strive for protecting national sovereignty against foreign invasions. The prestigious organization of the UK has incorporated 2 generals who are Tran Hung Dao and Vo Nguyen Giap of Vietnam in the list of 10 top generals in the world.

The Constitution of the Socialist Republic of Vietnam is one of the rare constitutions recognizing right in Article 1 that: "The Socialist Republic of Vietnam is an independent, sovereign state...". The requirement for protecting national security and territorial sovereignty is available in every country, but this becomes an urgent and permanent need for Vietnam. The National Security Law and the Law on People's Public Security of Vietnam affirm that the State shall consistently and comprehensively use measures: mass mobilization, professionalism, law, economics, science - technique, armed forces and diplomacy to protect the country's socialist regime and national security. Although the punishment measure of death sentence applied to people with particularly serious crimes of infringing national security is not the only one, it also contributes to implementing tasks of protecting national security and the country (Tran, et al., 2017). This punishment may not be applied in fact or only limitedly applied, but it cannot be repealed from the punishment list of current Criminal Code because it is a manifesto, and a strong political commitment, demonstrating the State's responsibility to



all people in protecting the values considered as sacred and inviolable.

### 3. Opinion on Current Death Sentence

Currently, there is an opinion argued that it should not be specified or to a lower extent, the death sentence should not be applied to some crimes of human violability, such as murder. Arguing for this view, it is thought that, up to now, there has not been any scientific study proving the effectiveness of the death sentence for criminal prevention; and that for those who commit the most serious crimes, before committing a crime, the offender is properly aware of the possibility of suffering the death sentence but even it cannot prevent them from committing the crime. Therefore, those following this point of view assume that such specification of death sentence only means revenge against the person causing crime in a way that violence for violence. Thus, the death sentence only encourages a hostile atmosphere with a shortage of humanity and lack of humanitarian in society. In this case, the death sentence is counter-valued;

For the above-mentioned opinion, it should be noted two points: firstly, this comes from foreign countries, not the common will of the State and society of Vietnam; secondly, although there has not been any scientific work adequately studying and proving the effectiveness of the death sentence, completely denying the value of the death sentence is lack of objectivity and science. In fact, many countries have repealed the death sentence, but after a while, some of them have restored it. Many major countries in the world such as the United States, China, and Russia still maintain the death sentence in their criminal law and apply this punishment in practice. In Vietnam, public opinion still strongly supports the death sentence. I would like to give two typical examples. *The first one*, the case of Le Van Vui kidnapping, then killing two children and sending a burned arm of Nguyen Huu Thuc (8 years old) in Buon Ho Township, Dak Lak province, threatening to ask for money from victims' family on 11 May 2010, the case made people in the local and nationwide indignant. The great majority of those who send e-mail to the mailbox on the electric information website of <http://phapluattp.vn> were demanding death sentence for Vui. *The second one*, the case of Le Van Luyen killing people, robbing property at Ngoc Bich gold shop on 24 August 2011 in Bac Giang province. In this case, Le Van Luyen killed three people, including an 18-month-old baby, cutting off the hand of Trinh Ngoc Bich (8 years old) to rob property. The case caused a stir of public opinion about the cruelty, the loss of humanity of the offender. However, because the accused was born on 18 October 1993, by 24 August 2011, 02 more months for him to turn to 18 years old, therefore, the Court has to base on Clause 1 Article 74 of the Criminal code 1999 to declare the accused of the heaviest punishment of 18 years in prison. The failure to

punish the death sentence to Le Van Luyen is lawful, but it has caused a lot of conflict opinions in society. Some people said: "*The criminals are currently very young. If those killing people are not old enough to be punished by the death sentence, there will be more and more under-18killers!*". In theory, public opinion is not the only basis to develop the law, but the support from the majority of people is the most crucial guarantee for applying the law into life. After all, the law is the will of the ruling class, masses of people to be developed into law. When the majority of people still support the death sentence, the punishment itself proves and affirms its value in social life. Its value in this case includes the content of social morality and the death sentence, approaching this perspective is one of the crucial ways to protect justice and social equity.

In addition to the above-mentioned social values, the death sentence also has legal value. The punishments prescribed in the national criminal law are always systematic, which are both diversified in quantity and balanced in terms of stripping the rights and interests of the convicted person's own. *Punishment must be a quantity measuring the extent of the State's punishment for offenders and corresponding to the nature and danger extent to the society of the offender.*

Both in terms of theory and practice, in case that the economic, political, social, and international situation changes, considering that using the death sentence is not necessary while the others in the punishment system still ensure fulfilling its task, particularly the life imprisonment and imprisonment with adequate value to suppress and educate, particularly and generally prevent, stabilize social order, then the State, with the will and aspirations of the people, will modify the law and eliminate the death sentence.

Following the common tendency of human society on gradually removing the death sentence, Vietnam's Criminal Codes have executed this. The Criminal Code 1985, after four amendments, the number of crime for death sentence regulated is 44, to the Criminal Code 1999, it is 29 crimes and the Criminal Code amended and supplemented in 2009, it is 22 crimes. The Criminal Code 2015, amended and supplemented in 2017, the death sentence is stipulated with 17 specific crimes. "In addition to gradually reducing the number of the crime stipulated to be applied the death sentence, criminal law is also amended in the procedure for applying the death sentence in accordance with the standards of the International Human Rights Law." (Institute of Public Policy and Law, 2015).

Maintaining the death sentence with regulating a number of cases that death sentence is transferred to life imprisonment or the mitigating possibility from a death sentence to life imprisonment as prescribed by Vietnamese current law is a reasonable and humane law-making option, because it has actually increased diversity



in the way used to handle particularly serious offenders of the State. The demand for repealing the death penalty must origin from the practical need to prevent and fight against crime. Therefore, in Vietnam, repealing the death sentence can only be implemented in the future. The law requires stability, every change in the law is only implemented when the effectiveness of that change has been clearly and certainly proven.

#### 4. Some Proposals on Death Sentence in Vietnam in Coming Time

In the current condition, in our opinion, Vietnam continues maintaining the death sentence in the law system, but the National Assembly should make amendments and supplements to the Criminal Code to be appropriate in direction of gradually reducing as follows:

- *Firstly*, it should consider, recalculate which crimes that need to apply the death sentence, only need to apply the highest punishment of life imprisonment or term imprisonment. According to Professor Roger Hood - a well-known expert in the world on death sentence: the provisions of Article 6 of ICCPR (International Covenant on Civil and Political Rights), particularly the provisions of paragraph 6 in this Article, imposing obligations on member countries under the Covenant must proceed to repeal the death sentence. In our point of view, the State should only regulate the death sentence for criminals in the group of “crimes”, including those who are likely to cause direct infringement on people’s lives, particularly killing many people such as some criminals of violating national security, terrorism, murder, etc., or criminals who are highly dangerous to the society such as drug-related crimes, the death penalty should be removed for illegal transportation of drugs. Criminals who only cause adverse effects on the property such as corruption and taking bribes, it should be studied to repeal the death sentence because the most important requirement in fighting with these crimes is to overcome the material loss caused by offenders to the society.

- *Secondly*, it should supplement additional regulations on applying death sentence through additionally regulating cases not punished by the death sentence not executed with the death sentence as well as those of death sentence transferred to life imprisonment, the National Assembly of Vietnam should consult the experience of ancient Vietnamese law during the Le and Nguyen dynasties. National court *criminal* law (Criminal law of Le dynasty) regulating 3 levels of death sentence: garroting, beheading; beheading in public; executing by dissection. The criminal law of Nguyen dynasty regulates that, for garroting (death sentence by garroting) and beheading (death sentence by beheading), there are 2

types: imprison then garroting later and immediately garroting; imprison then beheading and immediately beheading. Actually, only immediately garroting and immediately beheading are executed while the others are often not executed but transferred down to other milder punishment. The current criminal law of China has also been amended to reduce the death sentence and reduce the execution of sentenced death sentence.

- *Thirdly*, it should carefully consider applying the death sentence in the actual trial; for cases where the death sentence has been declared, *the* possibility to consider commutation for convicted people should be extended. Only cases of particularly serious offenses that are considered to be no longer able to renovate offenders will be executed with the death sentence on the basis of ensuring the right to defense as well as other rights that the law gives them.

The society is increasingly civilized and progressive, humanity is increasingly profound in criminal law of the countries in the world. It also indicates the execution of a more civilized and humane death sentence. It has been transferred from the forms such as beheading, killed by an elephant, horse, oil cauldron, etc., to shooting, injecting poison, electric shock, etc., to give a gentle death, in accordance with civilized society. The trend of the world as well as of Vietnam is increasingly limiting the death sentence, proceeding to remove the death sentence from social life in case of appropriate practical conditions. The study of death sentence from the perspective of traditional and modern values helps to orient the law completing and applying it on death sentence in Vietnam in accordance with the process of opening and international integration of Vietnam./.

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