

Legislation Development in Vietnam: Is the criminal law becoming more humane?

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Abstract: After four decades since the present of the first “modern” Criminal code of Vietnam in 1985, Vietnamese lawmakers have reached many remarkable milestones in terms of criminal justice policy and legislation. The paper shall discuss and clarify 02 main hypotheses. Firstly, there are 05 criteria to evaluate the clemency of the Vietnamese criminal law, including: 1) The proportion between the number of very serious, extremely serious crimes and total number of crimes; 2) Severity of the punishments in the 2015 Criminal Code; 3) The number of provisions on exemption from serving sentences, reduction of sentence duration and conviction expungement; 4) The number of provisions on penalty decisions in favor of the offenders; 5) The proportion between the decriminalized crimes and criminalized conducts in the criminal code. Secondly, based on analyzing these criteria, the paper shall prove that Vietnamese criminal law is becoming more humane. The achieved developments come from several reasons. The main one is that the entire political regime of Vietnam, with the key role of Communist Party, participated in the reformation process of the criminal law.

Keywords: Clemency, Legislation development, Vietnam, Vietnamese criminal justice policy, Vietnamese criminal law reform,

1. Introduction

In history, Vietnamese criminal law has been considered very harsh (Duyen, 2023) with strict punishments. According to the Human rights watch organization, many regulations of criminal law in Vietnam violate human rights (Human Right Watch, 2016). However, overall, these conclusions seem to be too hasty in the current period (Beren, 2006). For the past few decades, lawmakers have been trying to promote a more humane criminal justice system in Vietnam. The criminal justice system has been more effective in addressing human rights and sets the goals of safeguarding justice and human rights first and foremost (Le, 2022). Perhaps, the ignorance of legal researchers may be one of the explanations for the fact that the clemency of Vietnamese criminal law is still questioned and doubted by many scholars (Kien, 2019), (Hai 2021), (Hai, 2024). Furthermore, by examining publication trends in Vietnamese criminal law, I recognized that an unclear picture of “clemency in Vietnamese criminal law” might result from the lack of systematic research on the criteria to evaluate clemency in Vietnamese criminal law.

To provide a deep and systematic analysis of the “clemency in Vietnamese criminal law” and solve the mentioned above problems, this study used various research methods including a systematic literature review (based on the data of Scopus and Google Scholar) and data analysis. The study shall focus on analyzing peer-reviewed journal articles written in English published from 2016 to 2024. Like recent systematic reviews in legal research, this study uses the data recorded by Scopus and Google Scholar as a citation index. In specific, this paper uses some main criteria groups for searching to identify publications in the field. The first relates to the following terms “Criminal law”; “Clemency” or “Clemency trend”. The second is to locate in “Vietnam” or “Viet Nam” or “Vietnamese”. The next group

is the time frame used from “2016 to 2024”. Finally, the article type used should be “Research article” or “Book chapter” in the subject area of “Social science/law”. According to the collected statistics, there are 45 publications before the screening stage (41 from Google Scholar, 04 from Scopus).

In the second stage, we continue to apply some extra inclusion criteria to filter the collected data, including (i) The study must be written in English; (ii) The subject of the study must be “criminal law” (studies related to criminal procedure law, criminal sentencing or criminal justice policy are not accepted). After screening, the overall result collected is quite surprising. Only 32 out of 45 papers passed and were obtained (04 from Scopus and 28 from Google Scholar). However, there are 02 duplicate papers, consequently, only 30 works are collected and analyzed.

Analyzing the collected results, there are several research gaps which shall be described as follows:

Firstly, most of the studies approach the research issue of “clemency of Vietnamese criminal law” from the perspective of the severity of the punishments, especially the death penalty (Hai 2021), (Gen Sander, 2021), (Le. et al, 2022). Other criteria such as the ratio between decriminalized and criminalized harmful conduct, the proportion between the number of very serious, and extremely serious crimes, and the total number of crimes in the criminal code... have not been mentioned in any papers yet. Consequently, the nature of clemency in the recent criminal codes of Vietnam still has not yet been fully researched.

Secondly, some authors provide a systematic analysis of the codification process of the 2015 Criminal code related to specific types of crimes such as drug offenses which shows a progressive shift away from severe punishment such as capital punishment or life imprisonment (Gen Sander, 2021), (Le. et al, 2022). Generally, this can be regarded as typical evidence of the clemency of the criminal law in Vietnam. On the other hand, none of the collected papers provide a deep and direct analysis of the human nature of the entire criminal code of Vietnam especially the most recent criminal code of Vietnam.

Consequently, the paper shall answer and clarify 02 research questions as follows:

Question 1: What are the criteria to evaluate the clemency of Vietnamese criminal law?

Question 2: Is it true that Vietnamese criminal law is becoming more humane?

2. Criteria to Evaluate the Clemency of the Vietnamese Criminal Law

“Clemency” is viewed as synonymous for “all manifestations of mercy” (Daniel Pascoe, 2016). Clemency in criminal law or mercy in criminal law is an attempt to do justice, and it has come to be a way of doing justice (Carla Ann Hage Johnson, 1991). Since the late 70s, the concept of mercy in criminal justice has been regaining philosophical respectability of late (Carla Ann Hage Johnson, 1991). Some authors argue that clemency takes two forms: Commutations and pardons (Mark Osler, 2022). Others think that the nature of clemency is much broader. Within the wide range of scholarly and legal discourse on capital punishment and clemency, there are many other kinds of leniency in addition to the ones above, each with its own subtleties: commutation, amnesty, conditional pardon, reprieve and mercy (Daniel Pascoe, 2016). I would prefer the last approach. The types of clemency or its forms in criminal law must reflect the nature of this term – “all manifestations of mercy” (Daniel Pascoe, 2016).

Now, the question is, what are criteria to evaluate the clemency of the criminal law? This is an interesting issue because researchers often mention the clemency in criminal law as a trend, analyze and explain its demonstration in specific regulations; or try to identify and analyze the forms of clemency. Until now there has not been any published research papers that define the criteria to evaluate the clemency of criminal law in general and Vietnamese criminal law in specific¹. In this section, the scientific basis for building the criteria for assessing the clemency of criminal law shall be discussed in detail.

Scientific basis for building the criteria for assessing the clemency of criminal law

The bases for assessing the clemency of criminal law is built on the core “modules” of criminal law, which can be described below:

¹ Based on the data of Scopus in the period of 2016 - 2024

i) Crime and ii) Criminal liability (Cam, L.V., Viet, T.T., 2006) are two core modules of Vietnamese criminal law. Therefore, assessing the humanity of criminal law must be based on these two modules.

Extending these 02 modules we have:

- Crimes in the Vietnamese criminal law are expressed through a) The list of criminals that are regulated in the criminal law (Via the process of criminalization and decriminalization); b) Crime classification (less serious, serious, very serious and extremely serious crimes).

- Criminal liability is demonstrated through the following group of regulations: c) Punishments (Including main and additional punishments) and judicial remedies; d) The group of regulations on exemption from serving sentences, reduction of sentence duration and conviction expungement (This group of regulations include some specific measure: Commutation of sentence, exemption from criminal liability, elimination of criminal liability, reduction of the declared penalty, conditional parole, suspended sentence, criminal record remission, pardon, and amnesty); e) Decision on sentence (Including the application of measures to aggravating and mitigating criminal liability, Commutation of sentence, decision on sentence for special subjects such as persons under 18 years of age, pregnant and nursing women under 36 months old, the elderly over 70 years old).

Based on the nature of clemency - “all manifestations of mercy” (Daniel Pascoe, 2016) in criminal law, and the contents just analyzed above, the change in the content of some group of regulations directly reflects the clemency of the criminal law. Specifically divided into the following criteria:

Criterion 1: The proportion between the number of very serious, extremely serious crimes and total number of crimes in the criminal code shows the clemency of the criminal law. It increases if the ratio between the number of very serious and extremely serious crimes to the total number of regulated crimes decreases. In contrast, the clemency of criminal law decreases if this ratio increases over time.

Criterion 2: The severity of the punishments in the 2015 Criminal Code. The severity of criminal sanctions reflects the humanity of the criminal law by: reducing the application of harsh punishments to criminals whose focus is the death penalty; reducing the application of imprisonment penalties, and increasing the application of fines.

Criterion 3: The change in the number of provisions on exemption from serving sentences, reduction of sentence duration and conviction expungement reflects the idea of mercy spirit of the criminal law. If this statistic shows there is an increase in the number of regulations in favor of the offenders, it means that the criminal code has become more humane in terms of this criterion.

Criterion 4: The change in number of provisions on penalty decisions in favor of the offenders. The regulations on penalty decision directly demonstrate the clemency of the criminal law through the number of provisions on mitigating criminal liability, reducing the level of declared penalties, and deciding penalties for people under 18 years of age. crime... and the conditions for the application of these provisions. The application of criminal justice measures applied to vulnerable subjects shows the clemency spirit of the criminal law.

Criterion 5: The ratio between decriminalized and criminalized harmful conducts in the criminal code is the last criterion to evaluate the clemency of criminal law. If this statistic is higher than 1.0, it means that the total number of crimes eliminated from the criminal code is higher than the number of criminalized harmful conducts. Consequently, it shows that the severity of the criminal code decreases. On the other hand, it increases.

3. Is it True That Vietnamese Criminal Law is Becoming More Humane?

To answer the second research question, the article will evaluate the criminal law of Vietnam based on the five criteria just pointed out.

3.1. Criterion 1: The Number of Very Serious and Extremely Serious Crimes Prescribed by the Criminal Code

In Vietnamese Criminal Code, the lawmakers classify crimes into 04 categories according to their nature and danger to society². These categories include less serious crime; serious crime; very serious crime; and extremely serious crime.

- Less serious crime means a crime whose danger to society is not significant and for which the maximum sentence defined by this Code is a fine, community sentence (non-custodial), or 03 years' imprisonment;
- Serious crime means a crime whose danger to society is significant and for which the maximum sentence of the bracket defined by this Code is from over 03 years to 07 years of imprisonment;
- Very serious crime means a crime whose danger to society is great and for which the maximum sentence of the bracket defined by this Code is from over 07 years to 15 years of imprisonment;
- Extremely serious crime means a crime whose danger to society is enormous and for which the maximum sentence of the bracket defined by this Code is from over 15 years to 20 years of imprisonment, life imprisonment, or death.

The 1999 Criminal Code has 272 articles that regulate criminals. In which, 162/272 articles prescribe a very serious or extremely serious crime, corresponding to the rate of 59.55%. Specifically, the ratio of articles of law regulating an extremely serious crime is 80/272 articles, equivalent to 29.41%.

In the 2015 Criminal Code, there were 313 articles of law regulating crimes (increased 41 articles compared to the 1999 criminal Code). Of which, there are 195 articles of law specifying a very serious or extremely serious crime, accounting for 62.3% (compared to the 1999 Criminal Code, 33 articles increased). Of which, the number of laws regulating a particularly serious crime is 95/313 articles (an increase of 15 articles), equivalent to 30.35%.

From the statistics above, there is an increase in the number of articles regulating very serious or extremely serious crimes in the 2015 Criminal Code. However, when analyzing the specific regulations, it can be seen that the nature of the increase in the number of articles in the Criminal code does not fully reflect the change in the severity of the criminal law.

Many composite crimes in the 1999 Criminal Code are separated into specific crimes in the version of 2015 to ensure the effectiveness of criminal law.

For example, the lawmakers divided Article 120 – Trading in, fraudulently exchanging or appropriating children (extremely serious crime in the 1999 criminal code) into 03 specific articles in the 2015 criminal code, including: Article 151 - Trafficking of a person under 16 (Extremely serious crime), Article 152 - Swapping a person under 01 year of age (Very serious crime), Article 153 – Abduction of a person under 16 (Very serious crime). Some compound crimes in the chapter on drug-related crimes in the Criminal Code 1999 including Article 194 – Illegally stockpiling, transporting, trading in or appropriating narcotics (Extremely serious crime), Article 200 – Forcing, inducing other persons into illegal use of narcotics (Extremely serious crime) were divided into 05 crimes in the 2015 criminal code in Article 250 (Very serious crime), Article 251 (Extremely serious crime), Article 252 (Extremely serious crime), Article 257 (Extremely serious crime), Article 258 (Extremely serious crime)...

However, what needs to be clarified here is that the separation of compound crimes in the 1999 criminal code into 2 to 3 other new crimes in the 2015 criminal code does not increase the severity of the criminal law. These are only technical measures to ensure the correct handling of criminal liability of offenders. This can be explained by the following formulas described below.

The model of an article regulated a crime in 1999 criminal code can be described as the formula below:

$$C1(p) = E1 + E2 + \dots + En$$

(C1: Crime 1; E1: crime elements 1; E2 crimes elements 2; p: the punishment that the offender will be charged)

² Article 9, the 2015 Criminal code.

The C1 is a composite crime. It includes 2 independent crimes (or 2 independent crime elements) E1 and E2. If person no1 committed E1, person no2 committed E2, both of them shall be charged with C1 and subjected to punishments p. For example, in the 1999 criminal code of Vietnam, article 200 - forcing, inducing other persons into illegal use of narcotics regulates that: “Those who *force or induce other persons into illegal use of narcotics* shall be sentenced to between two and seven years of imprisonment.”

Analyzing this article, we have: C1= Forcing, inducing other persons into illegal use of narcotics; E1 = Forcing a person into illegal use of narcotics; E2 = Induce other persons into illegal use of narcotics; p = two and seven years of imprisonment

In the 2015 criminal code the model mentioned above has been changed into:

$$C1 \text{ (The 1999 criminal code)} (p) = (E1) C2 (p_1) + (E2) C3(p_2) + \dots$$

If person number 1 committed E1, person number 2 committed E2, the first one shall be charged with C2(p₁), the 2nd person shall be charged with C3(p₂). Most of the case “p₁” and “p₂” value less than or equal to “p”. (p ≥ p₁, p₂...).

For example, in the 1999 criminal code Article 120 - Trading in, fraudulently exchanging or appropriating children, section 2 regulates that those who trade in, fraudulently exchange or appropriate children in one of the following circumstances shall be sentenced to twenty years of imprisonment or life imprisonment. In the 2015 code, this article has been separated into 3 independent regulations (151, 152, 153), including: Article 151. Trafficking of a person under 16; Article 152. Swapping a person under 01 year of age; Article 153. Abduction of a person under 16.

Analyze the articles above we have:

Table 1.

Explaining the separation of Article 120 the 1999 criminal code into articles 151, 152, 153 the 2015 criminal code.

C1	=	(E1) C2	+	(E2) C3	+	(E3) C4
Article 120 the 1999 criminal code: Trading in, fraudulently exchanging or appropriating children		Article 151 the 2015 criminal code: Trafficking of a person under 16		Article 152 the 2015 criminal code: Swapping a person under 01 year of age		Article 153 the 2015 criminal code: Abduction of a person under 16
p (Punishment)		p ₁		p ₂		p ₃
10 - 20 years of imprisonment or life imprisonment		18 - 20 years of imprisonment or life imprisonment		07 - 12 years of imprisonment		10 - 15 years of imprisonment
Type of crime						
Extremely serious		Extremely serious		Very serious		Very serious
Comparison		p < p ₁		p > p ₂		p > p ₃
The severity		Increase		Reduce		Reduce

C1 (Article 120 the 1999 Criminal code) = Trading in, fraudulently exchanging or appropriating children; E1 (or C2 – article 151 the 2015 criminal code) = Trafficking of a person under 16; E2 (or C3 – article 152 the 2015 criminal code) = Swapping a person under 01 year of age; E3 (or C4 – article 153 the 2015 criminal code) = Abduction of a person under 16; p = 10 - 20 years of imprisonment or life imprisonment; p₁= 18 - 20 years of imprisonment or life imprisonment (p < p₁); p₂ = 07 - 12 years of imprisonment (p > p₂); p₃= 10 - 15 years of imprisonment (p > p₃). In essence, compared to the 1999 criminal Code, the addition of 30 new articles does not increase the severity of the 2015 Criminal Code (such as the case just analyzed above). In the 2015 Criminal Code, 30/41 new articles of law are regulated in the same way (accounting for 73.18%).

In the 2015 Criminal code, there are only 11 articles that stipulate a completely new crime (11/41 articles, accounting for 26.82%), including: Article 147. Employment of a person under 16 for pornographic purposes, Article 154. Trading, appropriation of human tissues or body parts, Article 167.

Infringement upon freedom of speech, freedom of the press, the right of access to information, and the right to protest of citizens, Article 187. Surrogacy for commercial purposes, Article 212. Forging documents in offering or listing profile, Article 216. Evading payment of social insurance, health insurance, unemployment insurance for workers, Article 285. Manufacturing, trading, exchanging, giving instruments, equipment, software serving illegal purposes, Article 291. Illegal collection, storage, exchanging, trading, publishing of information about bank accounts, Article 293. Illegal use of radio frequencies dedicated to emergency services, safety services, search and rescue, or national defense and security, Article 294. Deliberate harmful interference of radio frequencies, Article 391. Disruption in court. 02 out of 11 mentioned articles are very serious and extremely serious crimes (Article 147 – very serious crime and 154 – extremely serious crime) which accounted for 4.87% (2/41) of the number of criminal laws added in the 2015 Criminal Code.

To sum up, it can be seen in the first criterion that the severity of Vietnam's criminal law has increased but not significantly.

3.2. Criterion 2: Severity of the Punishments in the 2015 Criminal Code

The severity of the punishments regulated in the 2015 criminal code has decreased significantly due to two main factors: 1) The abolition of the death penalties applied on some criminals; 2) The trend of reducing the application of imprisonment sentences, increasing the application of fine penalty. These two factors shall be analyzed below.

The abolition of capital punishment in the 2015 criminal code

In the General provision of the 2015 criminal code, Article 40 affirms the definition of the death penalty as an unusual punishment that only applies to offenders who committed felony crimes. The Criminal Code 2015 added cases³ of not applying capital punishment on persons who are seventy-five years of age or older at the time of committing crimes or being tried; not applying capital punishment on offenders who are seventy-five years of age or older on crimes as follows: Embezzling property, receiving bribes but actively surrendering and returning at least three-quarters of embezzled properties, receiving bribes, and actively cooperating with the authorities in detecting and investigating crimes or contributing substantially. The narrowing of the range of statutes regulated the death penalty in the Criminal Code 2015 by depenalization shows clemency of criminal justice policy in Vietnam.

In the Criminal offenses section, the lawmakers remove capital punishment for seven crimes in the 2015 Criminal Code. They are: Plundering property (Article 168); Manufacturing and trading of counterfeit food or food additives (Article 193); Illegal possession of narcotic substances (Article 249); Appropriation of narcotic substances (Article 252); Destruction of work, facility, equipment essential for national security (Article 303); Insubordination (Article 394), and Surrendering to the enemy (Article 399). Out of the above list, the legislators also dismissed the death penalty with three more offenses. They are crimes of manufacturing and trading of counterfeit food or food additives; illegal possession of narcotics; and appropriation of narcotic substances. The lawmakers separated these crimes from an article that regulated the death penalty and dismissed this punishment on them. The lawmakers dismissed the crime of conducting banditry activities regulated in Article 83 of the 1999 Criminal Code. As a result, they abolished the death penalty imposed on this crime. The legislators have described the crime elements of this offense in another provision of the 2015 Code. According to the Criminal Code 1999, conducting banditry activities is an offense that opposes the administration of the state by armed activities in mountainous, marine, and other difficult accessed areas, murdering people, and looting or destroying property. This crime is regulated in the Criminal Code 2015 but with a different name as Terrorism (Article 113) (Hung, P.M., 2016). By taking effect, the Criminal Code 2015 logged a reduction in applying capital punishment to 18 crimes, accounting for 5.7% of the total number of criminal law provisions. The results can be described as the below table:

³ Article 40.2 and 40.3.

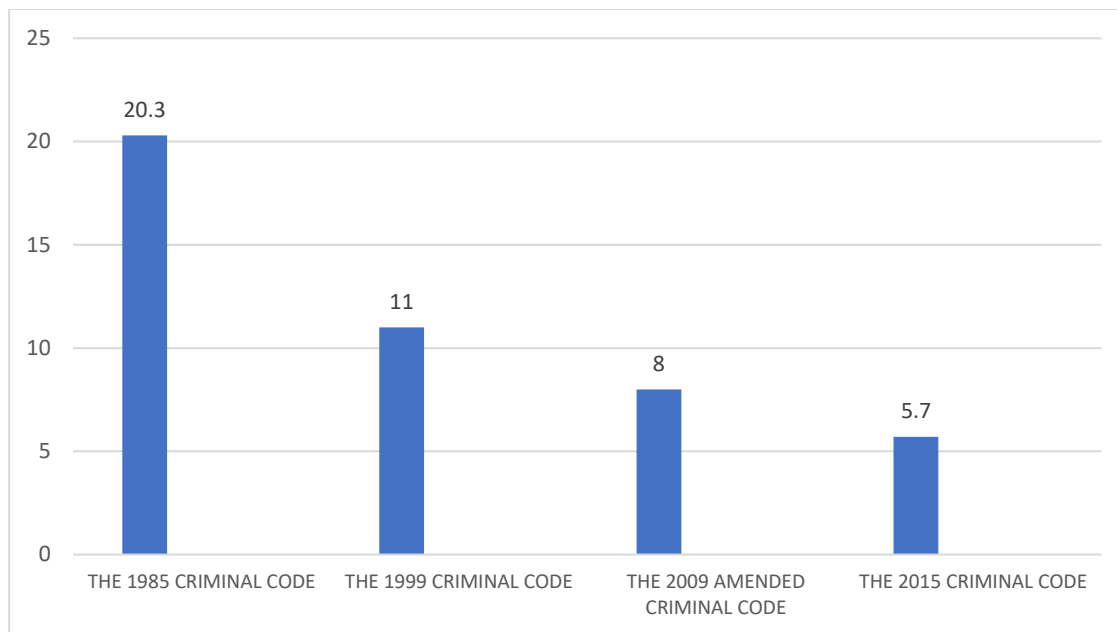


Figure 1.
The abolition of the death penalties in Vietnam's criminal law.

Consequently, the 2015 criminal code shows remarkable efforts to eliminate the death penalty in Vietnam criminal law. By doing so, the lawmakers narrowed the severity of criminal law, and the number of crimes that had to bear the death penalty dramatically decreased from 20.3% in 1985 to 5.7% in 2015.

The trend of reducing the application of imprisonment sentences, increasing the application of fine penalty

Fine applied to offenders are prescribed in most crime groups in the 2015 Criminal Code. Analyzing the statistics in the 2015 Criminal code, there are 119/318 regulations (37.4%) with 278 clauses that stipulate fine as the main penalty; 138 regulations with 167 clauses stipulate fine as additional penalties. Meanwhile, the 1999 Criminal Code has 76/268 articles (28.4%) with 87 penalty clauses apply fine as main penalty, the 1985 Criminal Code has only 6/215 articles (2.8%). There is a significant increase in the number of articles that stipulate fine as the main penalty. Compared to its successors, the number of regulations in the 2015 Criminal Code in which fine is the main punishment increases 43 articles (compared to the 1999 Criminal Code) (an increase of 56.5%), and increases 113 articles (compared to the 1985 Criminal Code) (an increase of 18.8 times).

The 2015 Criminal code shows a downward trend in the application of severe penalties compared to its predecessor. Before the 2015 Criminal code, fine was not a common punishment applied to prosecute offenders for penal liability. The number of defendants subjected to fine penalty can be described in the line chart below:

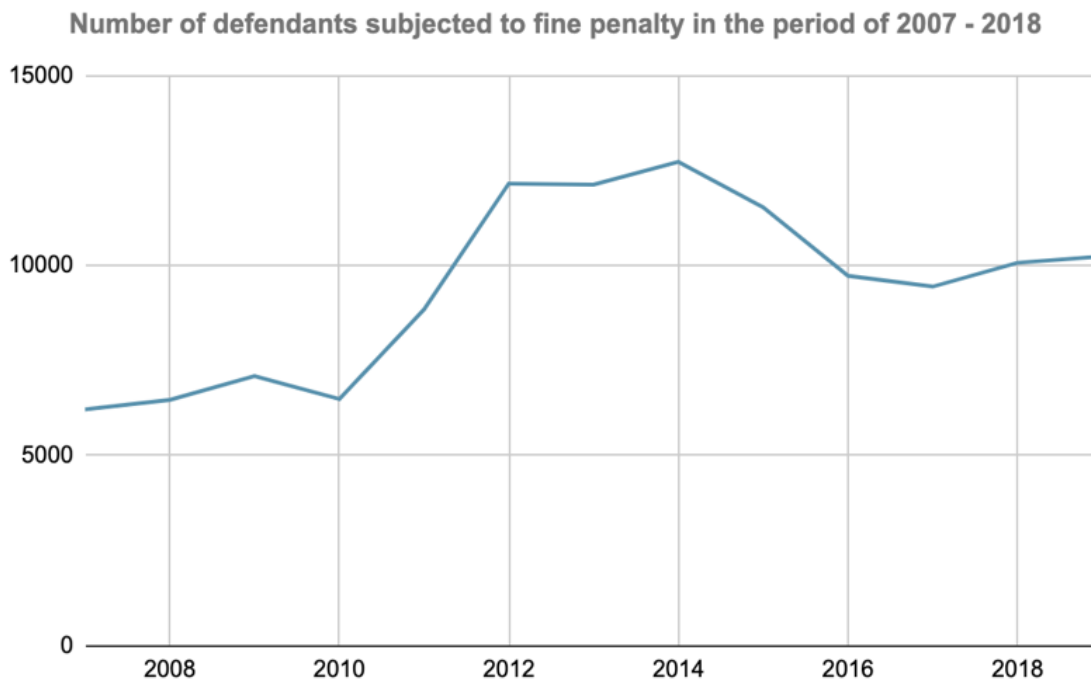


Figure 2.
Number of defendants subjected to fine penalty in the period of 2007 – 2018.

According to the actual statistics of the Supreme Court of Vietnam in the period 2007-2010, the annual prison penalty application rate is about 1.74% of the total number of defendants brought to trial. Meanwhile, the rate of imprisonment for this period is applied up to 90% of the total number of defendants brought to trial. From 2018 until now, when applying the provisions of the Criminal Code in 2015, this number tends to increase significantly. Accordingly, this rate ranges from 5.5% to 6.5% with about 5,400-6,300 defendants being subject to fine. Compared with the period 2007-2010, the number of defendants applying fine has increased by about 4000 defendants/year, corresponding to an increase of 58.01%⁴.

According to the reports of the supreme Court of Vietnam, in the period 2007 and 2008, the imprisonment punishment accounted for about 96.1 – 96.5% of the total penalty rate applied in criminal cases. The number of defendants subject to this penalty ranging from 92,000 to 99,000. Up to now, the rate of application of term imprisonment in Vietnam is still very high, however, it tends to decrease over time. In the period 2012 - 2015, the rate of application of imprisonment penalty decreased to approximately 90% of the total number of penalties applied (Toan, T.Q., 2015).

3.3. Criterion 3: The Change in the Number of Provisions on Exemption from Serving Sentences, Reduction of Sentence Duration and Conviction Expungement

In the 2015 Criminal Code, there has been an increase in the total number of provisions on exemption from serving sentences, reduction of sentence duration and conviction expungement which makes the criminal law become less severe. This trend can be examined by the addition of new regulations on the exclusion of criminal liability and conditional parole which shall be discussed as follows.

Firstly, in the 2015 criminal code, the legislator has added a number of completely new laws on the exclusion of criminal liability. In essence, these cases that are excluded from criminal liability are acts

⁴ Statistics of The Supreme Court of Vietnam.

that cause damage to society, if not provided for by law to exclude liability, the person performing those acts may have criminal liability. Therefore, in many cases, because of legal risks, harmful acts that are beneficial to society are not implemented in a timely manner. Three new cases of criminal liability exclusion are provided for in articles 24, 25 and 26 in order to meet the requirements of a socialist-oriented market economy and encourage people's participation in production activities, scientific research and crime prevention and control. These cases are:

1) Infliction of bodily harm while capturing criminals (Article 24). If the only way to capture a criminal is to conduct violence and infliction of bodily harm to that criminal, the use of violence in this case does not constitute a criminal offense. However, if the bodily harm inflicted by the use of violence is obviously more than necessary, the person who inflicts such damage shall bear criminal responsibility.

2) Risks from research, experiments, application of technological advances (Article 25). In this case, if the damage is an unforeseen, unwanted accident, and it was made for the common good of the community, for the benefit of society, it should not be considered a criminal. Based on this reason, article 25 regulates that the infliction of damage during the conduction of a research, experiment, or application of technological advances does not constitute a criminal offense provided the procedures and regulations are complied with and all preventive measures are taken. The person who fails to comply with the procedures, regulations, or take all preventive measures and causes damage shall bear criminal responsibility.

3) Following orders of commanders or superiors (Article 26). According to article 26, a person who inflicts damage while following an order of his/her commander or superior in the army to perform national defense and security duties is exempt from criminal responsibility if he/she complies with procedures for reporting to the order giver but the order giver still request that the order be followed. In this case, the order giver shall bear criminal responsibility.

Overall, the total number of criminal liability exemption cases in the 2015 criminal code has increased from 04 to 07 cases which makes the criminal law become less severe.

Secondly, the 2015 Criminal Code is the first legal document in the field of criminal justice that regulated the provisions for conditional parole. After 30 years, since 1985, this is the first time, it has witnessed a certain improvement in the ideas of the Vietnamese lawmakers. It illustrates the progress in the evolution of societal relations and the recognition of human rights in Vietnam. This measure enables the Court to dismiss the remaining imprisonment time for eligible convicts based on established criterion. Consequently, it is regarded as an important mean of obtaining early release from prison (Matjaž Ambrož, Katja Šugman Stubbs., 2011). The prerequisites and circumstances for implementing these commutation measures are outlined in Article 66 of the 2015 Criminal Code. According to this regulation, a prisoner may be granted parole if he or she matches all the following conditions: a) The prisoner does not have prior criminal record; b) The prisoner she shows remarkable improvements; c) The prisoner convicted of a serious crime, very serious crime, or extremely serious crime has received a commutation; d) The prisoner has a fixed residence; e) The prisoner has paid all the fines, legal costs, and civil compensation; f) The prisoner has served at least half of determinate imprisonment or at least 15 years of life imprisonment commuted to determinate imprisonment; g) The prisoner who is a wounded soldier, sick soldier, member of a martyr's family, aged 70 or older, a person suffers from a serious physical disability or extremely serious physical disability, a woman raising a child under 36 months of age must serve at least one third of determinate imprisonment or at least 12 years of a life imprisonment sentence commuted to determinate imprisonment; h) The prisoner is not committed in any of the cases specified in Clause 2 of Article 66.

3.4. Criterion 4: The Change in Number of Provisions on Penalty Decisions in Favor of the Offenders

In the group of provisions on penalty decisions in the 2015 Criminal Code, the legislators added many provisions in favor of the accused. This is most evident through the addition of a provision that does not apply the death penalty to elderly people over 70 years old, women who are pregnant or raising children under 36 months old. Moreover, the lawmakers also added into the Code new

regulations in favor of the offenders under 18 years of age which reduce the possibility to force this subject to bare imprisonment sentence.

Firstly, Article 40 of the 2015 Criminal code states that the death penalty 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. This penalty shall not be executed in any of the following cases: The convict is pregnant or a woman raising a child under 36 months of age; The sentenced person is 75 years of age or older; The person sentenced to death for embezzlement or taking bribes, after being sentenced, has returned at least one third of the property embezzled or bribes taken, closely cooperates with the authorities in the process of investigation or trial, or has made reparation in an effort to atone for the crime.

Secondly, the 2015 Criminal Code strengthens restorative justice measures for juvenile offenders. The legislator has added an item (Section 2 in Chapter XII) with 4 articles of law stipulating 03 measures of supervision and education for people under 18 years of age in case of being exempted from penal liability. Of which, there are two completely new measures, namely Reprimand (Article 93) and Conciliation in the community (Article 94). Together with the measure of Education in communes, wards and townships (defined in the 1999 Criminal code), these measures have increased the possibility of applying measures that are more favorable to juveniles. These are social-education-preventive measures applied with the aim of helping juvenile offenders realize their mistakes, have an attitude of repentance, repentance, and overcome their mistakes.

The 2015 Criminal Code stipulates specific conditions for the application of these measures. According to the spirit of Article 92 of the Criminal Code 2015, in order to apply supervision and education measures to offenders under 18 years of age who are exempt from penal liability, in addition to the conditions specified in Clause 2, Article 91 and other Articles of 93, 94, 95 of the 2015 Criminal Code require the consent of that person or their legal representative on the application of one of these monitoring and education measures. This provision is intended to avoid injustice or law enforcement officers forcing juvenile offenders to confess in order to be exempt from criminal liability. Furthermore, the applied supervision and education measure imposes many obligations on the person being supervised and educated; Therefore, it is necessary to obtain their consent before making a decision to apply.

4.5. Criterion 5: The Proportion Between Decriminalized and Criminalized Harmful Conducts in the 2015 Criminal Code

Decriminalization is a concept that has not received much attention in the legal sciences community. Many studies have argued that decriminalization is an integral part of the criminalization concept (McNamara et.al, 2018). Moreover, for countries following the Civil law system, criminalization (and decriminalization) has not received much attention from the jurists (Nina Peršak, 2020). Consequently, it makes the research even more restricting, and therefore, the legislation on reducing capital punishment is also limited. In Vietnam, legal scientists are approaching the concept of decriminalization as a legislation activity that narrows the applicable scope of criminal law by no longer considering an act a crime (that act used to be a crime) and removing the criminal liability imposed on an individual or legal person committed that act. Based on thoroughly scientific grounds, lawmakers will consider whether an offense has all the factors that committed a crime. If they found that that illegal act does not need to be considered a crime, they would decriminalize it and remove its criminal liability. This approach seems to be similar to that of the Sovietique and Civil law scholars.

In the 2015 criminal code, Vietnamese lawmakers have successfully decriminalized 07 harmful conducts regulated in the previous criminal code including: Article 148 - Entering into underage marriage; Article 159 - Conducting business illegally; Article 165 - Deliberately acting against the State's regulations on economic management, causing serious consequences; Article 167 - Making false reports on economic management; Article 170 - Breaching the regulations on the granting of industrial property protection deeds; Article 178 - Illegally using reserve funds for supplementation to the charter

capital of credit institutions; Article 269 - Failing to execute administrative decisions of competent State agencies on sending offenders to establishments for reeducation, medical treatment or administrative probation

Besides 07 crimes mentioned above, the lawmakers also conducted decriminalization by adjusting the crime elements in many other articles that regulated a criminal in the 1999 Criminal code. The adjusted articles include: Article 142 - Illegally using property; Article 144 - Neglecting responsibility causing serious damage to the State's property; Article 145 - Unintentionally causing serious damage to property. The adjustment can be described as the table below:

Table 3.
Decriminalization based on the change of the value of property in the 2015 criminal code.

Code	Article (Clause 1)	142	144	145	Conclusion
1999	Value	The value of property illegally used or damaged from 50 million dong			
	Decision	Criminal			
2015	Article (Clause 1)	177	179	180	Decriminalization
	Value	The value of property illegally used or damaged from 50 million dong to below 100 million dong			
	Decision	Not a criminal			
	Value	The value of property illegally used or damaged from 100 million dong			
Decision	Criminal				

In detail, in clause 1 of the article 177, 179, 180 the 2015 criminal code, the value of property illegally used or damaged due to the crime has been raised to one hundred million dong. Previously in the 1999 Criminal code, the value of property used as a basis for criminal prosecution for these crimes was fifty million dong. Prior to this change, the legislators have successfully decriminalized the acts that illegally used or damaged the property valued from 50 million dong to below 100 million dong.

Similar to the group of crimes infringing upon the economic management order, a number of crimes have been amended and supplemented by the legislator in the direction of increasing the minimum value of assets used as basic criminal signs. Previously, according to the provisions of Article 248 on the crime of gambling, a person who illegally gambled with the value of money or kind of two million dong or more satisfied constituted this crime. By the 2015 Criminal Code in Article 321, the value of money or in-kind as a basis for criminally handling gambling acts has been raised to five million dong.

From the analyses above, the number of decriminalized crimes in the 2015 code is 11 (regulated in the article 148, 159, 167, 165, 170, 177, 178, 179, 180, 269, 321 of the 1999 criminal code). Meanwhile, the legislators have criminalized 11 harmful conducts (regulated in the article 147, 154, 167, 187, 212, 216, 285, 291, 293, 294, 391). Accordingly, the ratio between decriminalized and criminalized harmful conducts in the criminal code 2015 is 11/11 which equals to 1.0. It means that the severity of the 2015 criminal code remains stable in the criterion number five.

4. Discussion

The results of the statistics analyzed above can be demonstrated as the table below:

Table 4.
The change of severity of the 2015 criminal code.

Number	Criterion	Result	Conclusion on the severity
1	The proportion between the number of very serious, extremely serious crimes and total number of crimes	Insignificant increase	Nearly unchanged
2	Severity of the punishments in the 2015 criminal code	Significantly decrease	Decreased
3	The number of provisions on exemption from serving sentences, reduction of sentence duration and conviction expungement	Significantly increase	Decreased
4	The number of provisions on penalty decisions in favor of the offenders	Significantly increase	Decreased
5	The proportion between the decriminalized and criminalized conducts in the criminal code	Equal	Unchanged

According to the table, there are 03 out of 05 listed criteria that show a decrease in the severity of the criminal code. These criteria play an important role in reducing the harshness of the criminal code. As mentioned above, the 2015 criminal code shows a remarkable effort of Vietnamese lawmakers in reducing the appliance of custodial punishments and the number of death penalty. Besides, the authorities also add into the criminal code many commutation measures and regulations on sentence decision to protect human rights, limit the negative impacts of criminal law punishments on vulnerable groups including the elderly people over 70 years old, women who are pregnant or raising children under 36 months old, people under 18 years of age. No regulations that exaggerated the criminality of the offenders are added into the criminal code. Meanwhile, the 02 other statistics show insignificant increase in the severity of the criminal code. In short, all the statistics have brought to a conclusion that the severity of the criminal law of Vietnam has decreased. It means the thesis argues that Vietnamese criminal law is more humane is a positive one.

The question is how did Vietnamese legislators achieve this result? From both theoretical and practical view, there several reasons that play the key role in reducing the severity of the criminal code as follow:

Firstly, the entire political regime of Vietnam, with the key role of Communist Party, participated in the reformation process of the criminal law. It is essential to mention the role of the Communist Party in Vietnam. According to article 4 the 2013 Constitution, the Communist Party is the force leading the State and society. Since the beginning of the 2000s, the Communist party of Vietnam has set a goal to reform the judicial system of the country. This goal is demonstrated in the many documents of the Politburo of the Communist party such as Resolution No. 08/NQ-TW dated January 2, 2002 on a number of key tasks of judicial reformation in the coming time; Resolution No. 48 NQ-TW dated May 24, 2005 on the strategy of building and perfecting the legal system of Vietnam to 2010, orientation to 2020; Resolution No. 49/NQ-TW dated June 2, 2005 on the Judicial Reform Strategy to 2020. These resolutions have outlined the basic contents of the country's criminal policy that the current Criminal Code is practices at that time were not yet legalized in time, such as: (1) Reducing the application of imprisonment sentences, expanding the scope of application of fine, and other non-custodial punishments; (2) Limiting the application of the death penalty; (3) Reduce the maximum penalty frame too high for some crimes; (4) Limit the criminalization of civil economic relations and less severe offenses; (5) Criminalize new offenses that are danger to society that appear in the process of socio-economic development, science, technology and international integration; (6) Apply strict criminal liability on offenders who have positions, political powers and authority in law enforcement. These are

important directions since the Parliament, the Government and legal experts in Vietnam have conducted the codification and amendment of the criminal code 2015.

Secondly, since 1986, after the “Doi Moi” period, economic, cultural and social life in Vietnam has changed dramatically. People's level of awareness and the sense of obeying the law has increased significantly. According to the statistics of United Nation as the figure below, from 1980 to 2021, the average value of the Human Development Index (HDI) for Vietnam was 0.606 points with a minimum of 0.463 points in 1980 (Thom, N.T., 2020) and a maximum of 0.704 points in 2020. The latest value from 2021 is 0.703 points. For comparison, the world average in 2021 based on 184 countries is 0.724 points (United Nations, 2021).

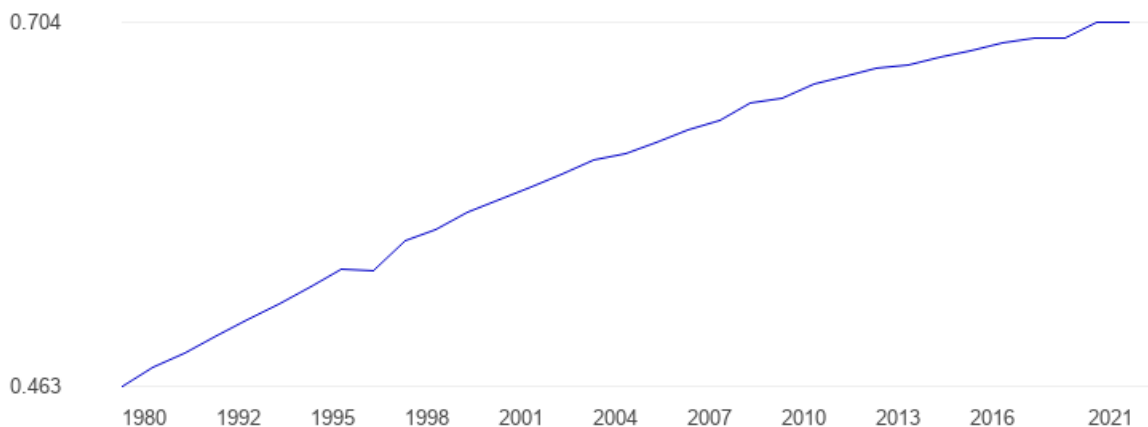


Figure 2.
Vietnam's human development index 1980 – 2022.

Vietnam's GDP in 2020 (before the Covid-19 pandemic) reached 3,847 trillion VND, 3.6 times higher than in 1999 with a growth rate of about 6-7.5%/year (Vietnam News Agency). This context has led to fundamental changes in the crime situation in Vietnam recently. Some specific types of crimes reduced significantly. It also led to the request to raise the minimum quantitative level constituting a number of crimes infringing on property and economic management order in the 2015 Criminal Code (ie decriminalization). The application of economic penalties such as fine is given priority.

Thirdly, the innovation in political ideology in Vietnam has led to the reduction in the severity of the criminal law. Since 1989, the entire political system of Vietnam has implemented the innovation perspective at the 6th Congress of the Communist Party of Vietnam, building an economy that assures the participation of the private sector. Consequently, it has led to the formation of a trend of decriminalization some specific crimes associated with the former centralized, bureaucratic, and subsidized economy such as the group of crimes infringing on socialist property (Chapter 4 of the 1985 Criminal Code); Illegal business crime; crime of false reporting in economic management...

Fourthly, reducing the severity of the criminal law is a common trend in the world and Vietnam (Viet, T.T., 2013). This trend is evident in the reduction of the death penalty and the replacement of incarceration by other less severe penalties. In terms of capital punishment elimination, in the years 2007, 2008, 2010, 2012, and 2014, the United Nations General Assembly has encouraged many countries to suspend the application of capital punishment and move toward abolition. To promote this notion, the United Nations has issued many important documents, including the International Covenant on Civil and Political Rights 1966 and The Second Optional Protocol to the International Covenant on Civil and Political Rights 1989. Accordingly, it affirmed the importance of the right to life for every human being. In countries where capital punishment is in force, the Court is the only subject that can impose this penalty on the most dangerous crimes. In terms of replacing incarceration by other less

severe penalties, it has become a trend since the middle of XIX century among European countries in which the custodial penalties are replaced by other non-custodial measures such as community labor. By the end of the XX century, this trend had become more widespread, reflected in many United Nations symposiums on crime prevention and on the adjudication regulations for lawbreakers. For example, at the United Nations Conference on this subject in 1985, for the first time, it was recommended to replace imprisonment with other non-custodial sanctions consistent with public safety (United Nation, 1991). Over the past decade, many punishments have replaced the imprisonment penalties prescribed in the criminal laws of countries around the world such as community service, restriction of freedom, detention at the offenders' house or detention on specified days (for example on weekends).

5. Conclusion

In the past, Vietnam used to have very strict criminal laws. However, in the current period, Vietnamese criminal law has fundamentally changed. Based on the assessment of 5 criteria reflecting level of clemency in the criminal law, it can be affirmed that Vietnamese criminal law has become more humane, aiming to protect and ensure human rights and civil rights. This result is achieved for many different reasons. Most importantly, perfecting the criminal law in the direction of protecting human rights has received the attention of the entire political system in Vietnam under the leadership of the Communist Party. In addition, economic and social developments at the home land and abroad have also had important impacts that require the development of a more humane criminal code./.

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