

Research Article

## **Criminalization and Decriminalization: A Study from a 20-Year practice in Vietnam (1999-2019)**

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### **Abstract**

In Vietnam, criminalization and decriminalization play a profound role in legislation that manifest criminal justice policy. These processes determine the boundary between being a crime or not that can severely affect human rights. As a result, under the rule of law, Vietnam jurists must study these legislative processes carefully. By this paper, from the perspective of a 20-year practice of criminal law legislation in Vietnam, we would like to clarify the concept, nature of criminalization, and decriminalization. After that, point out the scientific basis to conduct these parliamentary actions, then deliver some discussion about the suppression of criminal law, criminal elements, and classification in the process of criminalization.

**Keywords:** *Criminal law, criminalization, decriminalization, principles of criminal law.*

### **Research Questions**

The scientific concept of criminalization and decriminalization are very complex. There is a gap between jurists around the world in the understanding of these two legislative processes. In Civil law countries, criminalization is a less-studied problem (Nina Peršak, 2007), the jurists do not pay enough attention to research the principles to conduct criminalization because the law on the European continent is mostly analyzed from the “cognitive perspective, whereby primacy is given to “basic concepts of law” (Sevón, K., 1992).

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Meanwhile, The Anglo-American theory is mostly principle-oriented (Sevón, K., 1992). Moreover, in both the Continental Legal system and the Anglo-American legal system, hardly can we found a study on the theory of decriminalization. There are many published books, articles about decriminalization. However, all of them only focus on specific aspects of this legislative process but not on the theory of decriminalization.

From our view, criminalization and decriminalization are two different legislative processes that are conducted together by lawmakers when the State starts to codify criminal law. None of them is more important than others. As a result, the legislators must understand the dialectical relationship between these processes, their concepts, principles, and scientific elements that need to consider when to criminalize or decriminalize an offense.

In this paper, we will analyze and answer three research questions:

1. What is the concept of criminalization and decriminalization?
2. What are the principles of criminalization and decriminalization in Vietnam?
3. Which scientific factors need to consider when to criminalize or decriminalize an offense?

## **Discussion**

### **The Concept of Criminalization and Decriminalization**

#### **The Concept of Criminalization**

Criminalization and decriminalization are the two most important criteria in Vietnam's criminal justice policy. There have been many arguments about the concept of these legislative processes that come into many different opinions.

According to Common law jurists, criminalization is a legislative process (Duff et al, 2014) that demonstrates the State's policy. It includes the creation and enforcement of criminal offenses and the punishment of detected transgressions as well as investing police and other state agencies with coercive powers in the name of crime prevention (McNamara L, 2015). Besides, other researchers argued that criminalization is a process by which particular instances of conduct, once defined as criminal, are then actually prosecuted, adjudicated, and (typically) subjected to punishment (Michelle Madden Dempsey, 2017). According to this view, the researchers demonstrate the concept of criminalization in a broad sense. It is not only a legislative process in criminal law but also criminal proceedings, and judgment

execution. The reason for this is in Common law countries, The Criminal Act is regulated in a “wide<sup>3</sup>” direction that includes both statutes on crimes, criminal liability, and proceedings.

Meanwhile, criminalization is not an interesting topic among jurists in the Civil law legal system (Nina Peršak, 2007). They mainly focus on the concept of this legislative process. The definition of criminalization in the Continental legal system is narrower because criminal law does not contain in it the proceedings regulations. Criminalization is a legislative activity that defines which offense is a crime and the criminal liability with it in criminal law or equivalent documents (Michelle Madden Dempsey, 2017). Typical representatives are the French Republic, the Federal Republic of Germany. Jurists from the Sovietique law legal system define this term even narrower. However, we can point out a common understanding among researchers from these two legal systems. Accordingly, the lawmakers of the Soviet Union (and the Russian Federation after 1991) believe that criminalization is the widespread declaration in society that an act is a crime by criminal law (ОСНОВАНИЯ УГОЛОВНО, 2015) and imposes criminal liability on it (Antonov, 2001).

Due to the colonization and process of fighting for independence during the late XIX and XX century, Vietnamese criminal law is mainly affected by two main legislative ideologies from the French (1858 – 1954) and the Soviets (1951 – 1991). Consequently, the definition of criminalization in Vietnam is quite similar to those mentioned above. Criminalization is a form of legislative activity by which the lawmakers define a dangerous act to the society in the Criminal code as a crime and apply a criminal ability to the person or legal entities who commit it. By this process, the lawmakers criminalize offenses that:

1. Regarded as immoral behaviors; or illegal and imposed by the sanction regulated in administrative law. However, the dangers of these offenses have increased significantly. It leads to the need to apply criminal liability on those offenses to fight and control them effectively.
2. New types of offenses that appear in society. These acts have not been regulated in criminal law by lawmakers. They are dangerous and received the harshest condemnation from the community.

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<sup>3</sup> The term “wide” criminal code is used to distinguish it from a “close” criminal code. In some country affected my Sovietique law legal system, due to the principle of socialist legality, the criminal code is the only legal document that regulates crime and criminal liability. The procedures are stated in a separate document called the criminal procedure code.

### **The Concept of Decriminalization**

On the contrary to studies on criminalization, the theory about decriminalization is a less-concerned topic. The researchers mainly approach this legislative process from specific aspects, such as decriminalization with some types of crime (drug-related crimes, sex workers, and more) or the role of decriminalization in controlling crimes (John J. Donohue III, Benjamin Ewing, and David Peloquin, 2016). Surprisingly, some authors in the Common law legal system even mentioned that decriminalization is a part of the process of criminalization (Luke Namara (Ed), 2018). In Vietnam, the study about decriminalization is as important as that of criminalization. Due to the principle of socialist legality, the criminal code is the only legal document that regulates crime and criminal liability. The abolition of any crimes can only be conducted by lawmakers when codifying the criminal law. This process is called decriminalization. Moreover, the great influence from the Civil law and the Sovietique law legal systems makes Vietnam's law theory more "concept-oriented" (Sevón, K., 1992). From the legislation practice of Vietnam, decriminalization is a legislative process conducted by lawmakers to exclude a crime from the criminal code and eliminate the criminal liability imposed on the person or legal entities who commit it.

By decriminalization, the lawmakers dismiss the criminal liability imposed on the offense and eliminate that crime from the criminal code. A decriminalized offense should be an act that:

1. The danger of that offense has decreased significantly that makes them trivial. Consequently, the lawmakers no longer consider it a crime. However, after decriminalization, that offense is still illegal and needs to be prevented by other law areas;
2. The offense has completely lost its danger to society.

In the two mentioned types of acts, the application of criminal law sanctions becomes unnecessary, and the lawmakers have to eliminate (decriminalize) them from the criminal code. Consequently, they are no longer crimes.

### **The Grounds for Criminalization and Decriminalization**

In the Civil law legal system, there are no "principles" of criminalization (and decriminalization as well) as such known in the world of the Continental legal system – neither in theory nor in practice (Nina Peršak, 2007). Meanwhile, the Anglo-American legal

theory believes in “practical reasoning with principles” (Sevón, K., 1992). As the result, they have a separated legal basis include:

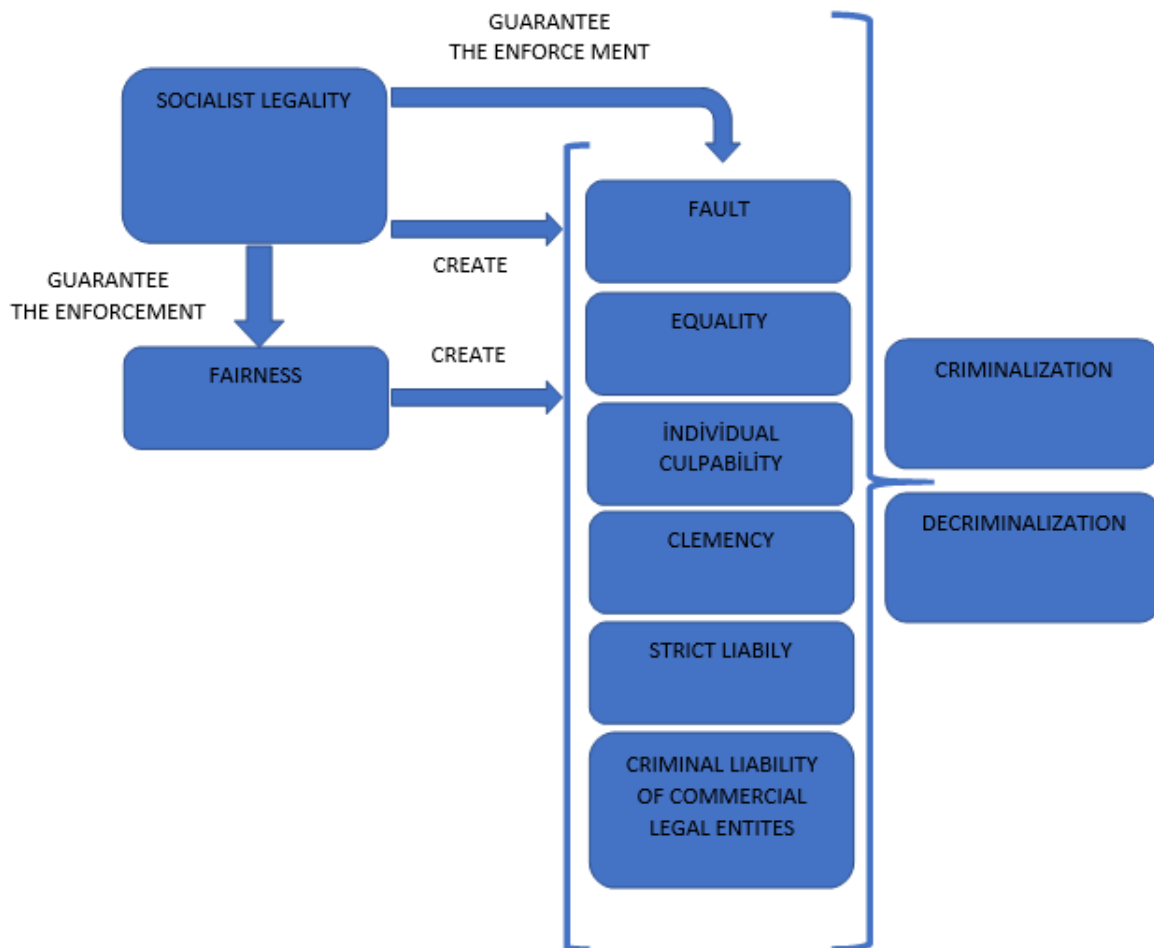
1. Harm principle;
2. Offense principle;
3. Legal Paternalism;
4. Legal Moralism.

In the criminal law system of countries affected by the ideology of the Soviets, there is nothing called “the principles of criminalization and decriminalization”. However, these countries (Both the Civil law and Sovietique law) have their general principles applied in the codification, application, and legal explanation, such as Italy (legality, personal, subjective responsibility), France (legality, individual culpability), Finland (legality, equality, humaneness (respect for human dignity), the principle of culpability, of proportionality in sentencing). This fact reflexes the lack of interest of jurists in these two legal systems in the study of criminalization and decriminalization.

In Vietnam, criminalization and decriminalization are essential legislative processes. However, there is no specific principle apply to these two categories. With the affection from the Soviets and the French, Vietnamese lawmakers apply the general principles of criminal law to conduct criminalization or decriminalization. Before the 2015 Criminal Code, there are 07 principles (Le Cam, 2007). In the third codification, lawmakers criminalized offenses committed by commercial legal entities. It led to the birth of the eighth principle of the criminal liability of commercial entities. By 2015, there are 8 principles in Vietnamese criminal law:

1. Socialist legality(\*);
2. Fairness(\*);
3. The individual culpability (principle of several responsibility);
4. Criminal liability based on fault;
5. Equality before the law;
6. Clemency;
7. Strict liability;
8. The criminal liability of commercial entities.

In these principles, *socialist legality* and *fairness* are the originals of others. The content of the first one is similar to the famous postulate of “*Nullum crimen sine lege*” - no crime without the law. The principle of socialist legality also protects other principles and affirms that they are fully protected and implemented in practice. The second one can be explained as a guideline to force lawmakers to guarantee the legal status of the subjects who committed a crime. Moreover, it sets out a duty for the state to ensure that the criminals will be treated equally regardless of social status, sex, property status, or nationality, and more. The purposes of criminal sanctions are not to harm or degrade the dignity of the offenders.



### The Principles System of Vietnam’s Criminal Law

According to the criminal law's principles, lawmakers have to consider the elements and characteristics<sup>4</sup> of an offense before criminalizing it. Consequently, they have to deliver well-grounded arguments (Tran Van Do, 2019) when choosing the level of severity of criminal liability imposed on that crime. On the one hand, the methods of criminal liability imposition

<sup>4</sup> In Vietnamese criminal law, the legislators define crime as a dangerous act to the society prescribes by the Criminal code, committed by a person having criminal liability, or legal entities intentionally or unintentionally.

must be prescribed by the Criminal code. On the other hand, it must be compatible with the severity of that offense, the identity of offenders, and more, based on the fundamental principles of criminal law to make sure that the severity of the punishments should not be greater than the gravity of the crime (UNODC, 2019). To guarantee that balance, lawmakers have to determine the factors that aggravate or mitigate the new crime's liability, commutation measures, and judicial remedies imposed on that crime.

In decriminalization, the lawmakers have to consider every aspect of that crime base on the mentioned principles before making the decision. The dangerousness of a crime recorded in the criminal code has decreased significantly or that offense no longer exists in society. When the offense becomes harmless, it is no longer compatible with the concept of a crime, and the criminal elements regulated in the criminal code. Consequently, the principles of criminal law require lawmakers to decriminalize that crime. However, decriminalizing a crime is not just eliminate it from the criminal code, the principle of socialist legality also sets out an obligation for the legislators to consider the effectiveness of administrative sanctions to prevent and control that harmful conduct before decriminalizing it.

### **The Factors that Need to Consider in the Process of Criminalization and Decriminalization**

Base on the researches of social relationships in Vietnam that have formed and developed, analyzing the practice of criminal law legislation in the last 30 years (1985 - 2015) with three times codification, we can affirm the essential to take into consideration many scientific factors of the process of criminalization and decriminalization (Trinh Tien Viet, 2016). In our opinion, those scientific factors mentioned above should include:

#### **The Danger Brought to the Society of the Offense**

Offensive conduct is the legitimate and the first ground need to consider in criminalization and decriminalization. With the offense that violates another person's rights and causes a severely mental state, lawmakers will consider criminalizing it (Nina Peršak, 2007). However, not every harmful conduct has to be criminalized. A criminalized offense must be acts that the danger of these offenses has increased significantly. From this perspective, the application of administrative sanctions becomes ineffective to prevent it. It leads to the need to apply criminal liability on those offenses to fight and control them effectively.

A decriminalized crime must be an act that is no longer dangerous to society; Or the social jeopardy of such acts has decreased significantly, making it unnecessary to use criminal law to deal with these illegal acts. In other words, if an offense is surely a less serious thing than harm” from which it follows that “law should not treat offenses as if they were as serious, by and large, as harms” (Nina Peršak, 2007), the lawmakers must decriminalize it.

### **The Relative Popularity of the Illegal Act**

When a crime no longer exists in society, the lawmakers dismiss it by the process of decriminalization. Besides, decriminalization of a crime arises when such behavior becomes uncommon in society (Le Cam, 1999). In the oppose to decriminalization, criminalization should be conducted on the prevalent offenses. However, legislators should note that this characteristic is not compulsory in all cases. To effectively control and prevent the sins that harm society, lawmakers should consider the relationship between the popularity of those acts and the level of severity it causes to the community. If the dangerous act is not too ubiquitous, however, its hazardous is significant, lawmakers should criminalize it.

### **The Ability to Effectively Prevent and Combat Dangerous behaviors by Civil and Administrative Legal Sanctions in Case of Decriminalization**

Decriminalized crimes may remain unlawful as defined in other laws. Therefore, before dismissing an offense, it is necessary to examine the effectiveness of preventing and combating such illegal acts by the civil and administrative legal sanctions. If those remedies can control and prevent the offense effectively, lawmakers can initiate decriminalization of the crime. This factor shows the unification of the legal system in Vietnam and the close relationship between criminal law and administrative law.

### **The Necessity to Use Criminal Law Sanctions to Combat Dangerous Acts in Case of Criminalization**

Criminalization forces subjects that conducted a crime to bear criminal liability. It leads to many negative consequences for the convicted because by imposing criminal law sanctions, the court will take away part or all of their rights. In some cases, such as the death penalty, the sentence becomes unfixable (Trinh Quoc Toan, 2015). There are two questions that the legislators need to answer. The first question is: “It is necessary to criminalize that offense?”.



The second one is: “Which penalties should be imposed on that new crime?”. The criminal law sanctions must be balanced, not too severe or negligible.

This factor has similar content to the *harm principle* in the Common law legal system. According to Feinberg (and Von Hirsch and Simester), “it is always a good reason in support of penal legislation that it would be *effective in preventing (eliminating, reducing)* harm to persons other than the actor (the one prohibited from acting) and there is no other means that is *equally effective at no greater cost to other values*” (Feinberg, 1985).

### **The Economic - Cultural - Social - Political Basis**

Crime is a social and legal concept, so the criminalization and decriminalization process must be done based on requirements arising from the economic, cultural, social, and political situation. If the legislators do not consider this basis, it can lead to the risk of criminal neglect. It makes the deterrence of the regulations decrease that negatively impact society. Moreover, these processes should be commensurate with the advances of technology in society. For example, in the fourth industrial revolution, many legal scholars have pointed out that the possibility of entities such as Intelligence systems (Monika Simmler, Nora Markwalder, 2019), Cyborg (Wytske van der Wagen, Wolter Pieters, 2015) and Robots (Danaher, J., 2014) using artificial intelligence to conduct dangerous act to society is quite obvious that need to criminalize to protect the community. However, the development of society can deliver many significant advantages in the crime prevention process. The core technologies in The Fourth industrial revolution (Klaus Schwab, 2016) (ICT, Big Data (Youssra Riahi, Sara Riahi, 2018), Internet of Things (Miraz, M. H., et al, 2015), sensor system (Arisa Olivia Putri, Musab A. M. Ali, Mohammad Saad, Sidiq Samsul Hidayat, 2008), smart-cities (Mohanty, S. P., Choppali, U., & Kougianos, 2016), implantable technology (Gill Haddow, Shawn H. E. Harmon, Leah Gilman, 2016), and wearable internet (Shivayogi Hiremath, Geng Yang, Kunal Mankodiya, 2014)) will create the opportunities for citizens to participate in the process of supervising the community, and maximize the effectiveness of public agencies to combat against criminal offenses. From our view, in the future, many types of traditional crimes will be well-controlled and effectively prevented by administrative sanctions before they can cause harm to society. As the result, it leads to the need for decriminalization for these crimes.

### **The Criminology Basis**

The lawmakers to consider comprehensive factors before deciding on criminalization or decriminalization. These factors include<sup>5</sup>

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

By the studies in criminology, the legislators can evaluate the severity of the offensive conduct. Moreover, they can figure out the causes and conditions of that act to measure the effectiveness of criminal law sanctions imposed on it. If the administrative regulations are strict enough to eliminate the cause of that offense, criminalization becomes unnecessary.

### **The International Integration Basis**

The process of criminalization or decriminalization must be based on international standards consistently with conditions in Vietnam. Until now, the legislative techniques of Vietnamese lawmakers are still incomplete. As the result, learning the experiences of other countries is essential.

### **Criminalization and Decriminalization in the Third Codification of Vietnamese Criminal Law**

In the 2015 Criminal code, which is currently in enforcement, lawmakers have implemented a series of new types of crime (which have not been regulated in the 1999 Code), such as Voluntary manslaughter due to the use of unjustified force in self-defense or while capturing a criminal (Paragraph 2, Article 126); Deliberate infliction of bodily harm because of unjustified force in capturing criminals (Paragraph 2, Article 136); Infringement upon secret information, mail, telephone, telegraph privacy, or other means of private information exchange (Points “c”, “d”, “đ”, Paragraph 1, Article 159); Forcing officials to resign or laying off workers against the law (Points “b” and “c”, Paragraph 1, Article 162); Infringement upon freedom of speech, freedom of the press, the right of access to information, and the right to protest of citizens (Article 167); Surrogacy for commercial purposes (Article 287); and added a series of new crimes which are regulated in point “c”, paragraph 1, Article 2 “The

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<sup>5</sup> Trinh Tien Viet, Nguyen Khac Hai, *The Criminology Curriculum* (National University of Hanoi Press 2020) 25-33.

enforcement of Vietnam Criminal Code 2015” in The Resolution no 41/2017/QH 2014 on 20th June 2017 in The 3rd session of the XIV National Assembly, such as Article 147, 154, 212-224, 230, 243, 256, 285, 291-294, 297, 301-302, 336, 348, 388, 391, 393 and 418.

The 2015 Criminal code marked a dramatic change in the idea of legislation. For the first time in the history of Vietnam’s criminal law, the legislators also criminalized many offenses conducted by commercial entities<sup>6</sup>. Commercial legal entities have to bear criminal liability in 33 articles in 3 different group of crimes, such as Smuggling (Article 188); Illegal transport of goods or money across the border (Article 189); Manufacturing and trading of banned goods (Article 190); Possession and transport of banned goods (Article 191); and more. The criminalization of commercial legal entities in the 2015 Criminal code is essential. Firstly, the development of the economy in the last 30 years in Vietnam has led to the rise of the crime situation. Besides the crimes committed individuals, many of them have a close relationship with commercial entities. The consequences of those offenses are significant to the country’s economy, environment, and sovereignty. Secondly, the main administrative sanction imposed on commercial legal entities is fine. However, the severity of this punishment is not enough. Once the companies finish their duty to pay the fines, they tend to keep on violating the law because of the impressive profit they gain from it. It makes these administrative sanctions less effective. Thirdly, some commercial legal entities established by professional groups to commit crimes. They sabotage the economy, conduct illegal acts that harm citizen's rights and interests. Consequently, it leads to the need for a new type of liability that is strict enough to prevent and combat it. Fourthly, Vietnam has participated in United Nations Convention against Transnational Organized Crime, and the ASEAN Convention on Counter-Terrorism. These international documents regulate the responsibility of the participant to record the criminal liability of legal entities. Until 2015, there are 119 nations (Vo Van Trung, 2016) that record the criminal liability of legal entities.

*Table 1.*

Crimes that commercial entities have to bear criminal liability

| <b>Group of crimes</b> | <b>Number of criminalized offenses</b>   |
|------------------------|--|
|                        | <b>21 offenses</b>   |
| <b>Economic crimes</b> | Article 188 (Smuggling); Article 189 (Illegal trafficking of goods or money across the border); Article 190 (Manufacture or trading of banned commodities); Article 191 (Possession or transport of banned commodities); Article 192 (manufacture or trading of counterfeit foods, foodstuff or food additives); Article |

<sup>6</sup> In Vietnam, there are many different ideas about criminalizing harmful conducts of commercial legal entities. However, in this article, the authors will not mention it.

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|---|---|
| <p><b>Environmental crimes</b></p>                          | <p>193 (Manufacturing and trading of counterfeit food or food additives); Article 194 (Manufacture of trading of counterfeit medicines for treatment or prevention of diseases); Article 195 (Manufacture or trading of counterfeit animal feeds, fertilizers, veterinary medicine, pesticides, plant varieties, animal breeds); Article 196 (Hoarding); Article 200 (Tax evasion); Article 203 (Illegal printing, issuance, trading of invoices or receipts); Article 209 (Deliberate publishing of false information or concealment of information in securities activities); Article 210 (Use of internal information to deal in securities); Article 211 (Cornering the stock market); Article 213 (Commission of frauds in insurance business); Article 216 (Evasion of social insurance, health insurance, unemployment insurance payment for employees); Article 217 (Violations against regulations on competition); Article 225 (Infringement of copyrights and relevant rights); Article 226 (Infringement of industrial property rights); Article 227 (violations against regulations on survey, exploration and extraction of natural resources); Article 232 (Violations against regulations on forest extraction and protection).</p> <p><b>10 offenses</b></p> <p>Article 234 (Violations against regulations on management and protection of wild animals); Article 235 (Causing environmental pollution); Article 237 (Violations against regulations on environmental emergency prevention, response and relief); Article 238 (Violations against regulations on the protection of irrigation works, embankments and works for protection against natural disasters; Violations against regulations on the protection of river banks); Article 239 (Import of wastes into Vietnam’s territory); Article 242 (Destruction of aquatic resources); Article 243 (Forest destruction); Article 244 (Violations against regulations on management and protection of endangered, rare animals); Article 245 (Violations against regulations on management of wildlife sanctuaries); Article 246 (Import and spread of invasive alien species).</p> |
| <p><b>Crimes against public order and public safety</b></p> | <p><b>02 offenses</b></p> <p>Article 300 (Terrorism financing); Article 324 (Money laundering).</p>   |
| <p>Total</p>  | <p><b>33 offenses</b></p>   |

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In the third codification of criminal law, the lawmakers have:

a) Officially stated “not guilty” with some types of acts (In the past period, they had not been determined guilty or not guilty yet) include: the accomplices do not have to bear the criminal liability about the excessive behavior of the practitioners (Paragraph 4 Article 17) and 03 cases about criminal liability exemption in Section IV (From Article 24 to 26) - In General provision<sup>7</sup>;

Moreover, in the 2015 Criminal code, the legislators have decriminalized a significant number of crimes committed by juveniles. According to paragraph 2 Article 12, the A person from 14 years of age to below 16 years of age shall bear criminal responsibility for the

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<sup>7</sup> In the 2015 Criminal Code of Vietnam, there are three main parts. They are General provision (Part 1); Criminal offenses (Part 2), Implementation (Part 3).

murder, deliberate infliction of bodily harm upon other people, raping, raping people under 16 years of age, sexual abuse of people from 13 to under 16 years of age, robbery, kidnapping for ransom; 22 very serious crimes and extremely serious crimes defined in this article, which occupy approximately 7% of all crimes in the code. In the previous Criminal code, a person from 14 to 16 years of age has to bear criminal liability when committed very serious crimes intentionally or extremely serious crimes.

*Table 2.*

The decriminalization of crimes committed by juveniles

| <b>The 1999 Criminal Code</b>                                     | <b>The 2015 Criminal Code</b> |
|---|-------------------------------|
| All very serious crimes intentionally or extremely serious crimes | 22 crimes                     |
| <i>Approx</i> 42%   | 7%                            |

b) Decriminalized some kinds of crime, for instance: Registering illegal marriage (Article 149); Conducting business illegally (Article 159); Deliberately acting against the State's regulations on economic management, causing serious consequences (Article 165); Breaching regulations relating to the protection and use of historical or cultural relics, famous landscapes, and scenic places, causing serious consequences (Article 272); Making illegal decisions (Article 296) in Vietnamese criminal code 1999 - in the Criminal offenses part of the code. In the third codification, the lawmakers dismissed the crime of conducting banditry activities regulated in Article 83 of the 1999 Criminal Code. As a result, they abolished the death penalty imposed on this crime. However, in this case, this is not decriminalization. The legislators have described the crime elements of this offense in another provision of the 2015 Code. According to the Criminal Code 1999, conducting banditry activities is an offense that opposes the administration of the state by armed activities in mountainous, marine, and other difficult accessed areas, murdering people, and looting or destroying property. This crime is regulated in the Criminal Code 2015 but with a different name as Terrorism (Article 113) (Pham Manh Hung, 2016).

## **Conclusion**

From the theoretical study on criminalization and decriminalization in Vietnam's criminal law practice in the two decades (1999-2019), we can conclude:

*Firstly*, in the process of codifying criminal law, criminalization and decriminalization are always essential. These processes ensure the meet of criminal law to the need of society in crime prevention.

*Secondly*, criminalization and decriminalization are always the first research subjects in Criminal justice policy. The study and implementation of criminalization and decriminalization in criminal codification create far-reaching effects on the entire process of applying the regulations of criminal law into the practice of social life. Consequently, before conducting these legislative processes, lawmakers must carefully considered, based on the factual and objective confirmation of the severity and nature of the behavior, combined with scientific evidence studies based on criminal law's principles and 07 scientific factors: (1) The danger brought to the society of the offense; (2) The relative popularity of the illegal act; (3) The ability to effectively prevent and combat dangerous behaviors by civil and administrative legal sanctions in case of decriminalization; (4) The necessity to use criminal law sanctions to combat dangerous acts in case of criminalization; (5) The economic - cultural - social - political basis; (6) The criminology basis; (7) The international integration basis.

In particular, the lawmakers must consider these factors in a general, dialectical way with each other. If they lack one of the 07 factors above, it may lead to misconceptions and many negative consequences to society.

Finally, criminalization or decriminalization always has close relationships that are inseparable from categories penalization and depenalization. The study of these categories is extremely complicated and requires very high scientific accuracy. Comprehensive researches on the issues surrounding criminalization and decriminalization not only contribute to building up important theoretical bases on these topics but also helps legislators apply these two legislation processes correctly to improve the efficiency of the Courts, protecting the rights and freedoms of citizens; legal rights and interests of society and the State by criminal law./.

### **References**

1. Antonov, Anatoly Dmitrievich, *Теоретические основы криминализации и декриминализации* (Higher Attestation Commission of the Russian Federation 2001).

2. Putri, A.O., Ali, M.A., Saad, M., & Hidayat, S.S. (2018). Wearable sensor and internet of things technology for better medical science: A review. *International Journal of Engineering & Technology*, 7(4.11), 1-4.
3. Danaher, J. (2017). Robotic rape and robotic child sexual abuse: should they be criminalised? *Criminal law and philosophy*, 11(1), 71-95.
4. Duff et al, *Criminalization: The Political Morality of the Criminal Law* (Oxford University Press 2014) 2.
5. Feinberg, J. *Offense to Others – The Moral Limits of the Criminal Law* (Oxford University Press 1985) xix
6. Gill Haddow, Shawn H.E. Harmon, Leah Gilman, *Implantable Smart Technologies (IST): Defining the ‘Sting’ in Data and Device* (Health Care Anal 2016) 211.
7. John J. Donohue III, Benjamin Ewing, and David Peloquin ‘Rethinking America’s Illegal Drug Policy’, in Jens Ludwig, Philip J. Cook, Justin McCrary, *Controlling Crime: Strategies and Tradeoff* (University of Chicago Press 2011).
8. Klaus Schwab, *The Fourth Industrial Revolution* (World Economic Forum 2016) 110-150.
9. Le Cam, *Policy fundamental issues in the period of building the rule of law state* (Legal Science Information: Institute of Legal Science - Ministry of Justice 1999) 53.
10. Le Cam, *Vietnam Criminal law (General provisions) (Curriculum)* (Vietnam National University Press 2007) 74-82.
11. Luke Namara (Ed), ‘Theorising Criminalisation: The Value of Modalities approach’ (2018) 7 3 *Crime Justice Journal* 96.
12. Nina Peršak, *Grounds for (Principles of) Criminalisation*, in *Criminalising Harmful Conduct: The Harm Principle, its limits and Continental Counterparts* (Springer 2007) 14.
13. McNamara L, ‘Criminalisation research in Australia: Building a foundation for normative theorising and principled law reform’ in Crofts T and Loughnan A (eds), *Criminalisation and Criminal Responsibility in Australia* (Oxford University Press 2015) 33-51.

14. Michelle Madden Dempsey, *Processes of Criminalization in Domestic and International Law: Considering Sexual Violence*, (2017) 4 *Crim Law and Philos* 4.
15. Michelle Madden Dempsey, 'Processes of Criminalization in Domestic and International Law Considering Sexual Violence' (2018) 12 *Crim Law and Philos* 642.
16. Miraz, M.H., et al, *A Review on Internet of Things (IoT), Internet of Everything (IoE) and Internet of Nano Things (IoNT)*, (2015) *IEEE Internet Technologies and Applications* 219-224.
17. Mohanty, S.P., Choppali, U., & Koungianos, 'Everythings you wanted to know about smart cities: The Internet of things is the backbone' (2016) 5 3 *IEEE Consumer Electronics Magazine* 60.
18. Monika Simmler, Nora Markwalder, *Guilty robots? - Rethinking the nature of culpability and legal personhood in an age of Artificial Intelligence*, (2019) 3 *Criminal Law Forum* 6.
19. Основания уголовно-правового запрета: криминализация и декриминализация С.220 (автор главы – Г.А. Злобин).
20. Hung, P.M. (2016). Criminalization and decriminalization cases in the Criminal Code 2015' (2016) 1 *Procuracy Journal* 14.
21. Toan, T.Q. (2015). *Punishments in Vietnamese criminal law, under the perspective of human rights protection* (The National Political Press 2015) 127.
22. Hiremath, S., Yang, G., Mankodiya, K. (2014). Wearable Internet of Things: Concept, Architectural Components and Promises for Person - Centered Healthcare (National Conference on Wireless Mobile Communication and Healthcare - "Transforming healthcare through innovations in mobile and wireless technologies" 2014). 304.
23. Sevón, K. (1992). 'The concepts of "Rechtsgut", "Handlung" and "Schuld"' in R. Lahti and K. Nuotio (eds.), *Criminal Law Theory in Transition – Finnish and Comparative Perspectives* (Finnish Lawyer's Publishing Company 1992) 127.
24. Bjørge, T. (2016). *Preventing crime A Holistic Approach*, in *Crime Prevention and Security Management*, Palgrave (Macmillan 2016).
25. Tran Van Do, Hoang Manh Hung, *Sentencing and applying the penalty* (Vietnam National University Press 2019) 113.



26. Trinh Tien Viet, Nguyen Khac Hai, *The Criminology Curriculum* (National University of Hanoi Press 2020) 25-33.
27. Trinh Tien Viet, *Social control theory on crimes and its application in Vietnam* (Ministry Press 2016) 13.
28. UNODC, 'Justifying punishment in the community' (*The Doha Declaration* 22 April 2019) <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-7/key-issues/2--justifying-punishment-in-the-community.html>
29. Vo Van Trung, 'Criminaliability of commercial legal entities in the 2015 criminal code' (*Ministry of Justice*, 20 September 2016) <https://moj.gov.vn/qt/tintuc/Pages/nghien-cuu-trao-doi.aspx?ItemID=2026>, accessed: 30/4/2020.
30. Youssra Riahi, Sara Riahi, 'Big Data and Big Data Analytics: Concepts, Types and Technologies' (2018) 5 9 *International Journal of Research and Engineering* 524.
31. Wytske van der Wagen, Wolter Pieters, 'From Cybercrime to Cyborg Crime: Botnets as Hybrid Criminal Actor-Networks' (2015) 55 3 *The British Journal of Criminology* 578-595.