

CRIMINAL SENTENCING POLICY FOR JUVENILE DELINQUENCY IN VIETNAM: DEVELOPMENT ORIENTATION AND PRIMARY RECOMMENDATIONS

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Abstract: In recent years, juvenile delinquency in Vietnam has shown an upward trend in both number and severity. This is a vulnerable and disadvantaged group that requires special protection in legal relations. Therefore, the State needs to adopt criminal handling policies that are effective while still ensuring the lawful rights and interests of these children. To meet this requirement, criminal law has been amended and supplemented with provisions relating to offenders under 16 years old, with many points better aligned with practical realities. This article analyzes the current regulations, clarifies the criminal policy for juvenile offenders, and proposes priority solutions for the implementation of this policy in Vietnam.

Keywords: Criminal policy, criminal law policy, juvenile offenders, juvenile, judicial priority.

1. Introduction

Children committing crimes has become an extremely complex issue nowadays, thriving from various causes, among which the most prominent is the nature of this particular group. Therefore, when the actions of this group reach a significantly dangerous level, infringing upon one or more social relationships protected by the State, the development of criminal policy aimed at safeguarding these social relationships comes into existence (University of Law Hanoi, 2021). Criminal policy, more specifically the criminal prosecution policy of the Communist Party and the Socialist Republic of Vietnam, has somewhat oriented and reflected the State's perspective on criminal legal provisions regarding the criminal responsibility of juvenile offenders, including limitations on criminal prosecution and methods of handling this group. On the other hand, due to their underdeveloped psychological and physiological characteristics, juvenile offenders are recognized by the Party and the State as a vulnerable group, and the disadvantaged group (Le Thi Diem Hang, 2022) that should be given priority over other criminal subjects (Vu Thi Phuong, 2020). Therefore, the criminal prosecution policy concerning juvenile offenders is not punitive but focuses on education and prevention. However, in recent years, the number and nature of juvenile offenders, including children, have been increasing in terms of quantity, level of danger, and most notably, the case of Pham Duc N. (15 years old) committing murder in Province H; the case of 13 individuals (aged 14 to 18) carrying out 15 robberies in City V (Thien Thanh, 2021),... Therefore, the demand for

developing criminal prosecution policies that both protect the rights of children and safeguard other social relationships infringed upon by this group is an urgent requirement of the times.

Pham Duc N., a 15-year-old individual, according to Vietnamese law, is considered a child who used a knife to fatally stab a neighbor on the first day of the Lunar New Year in 2021. N.'s behavior has caused public alarm due to the dangerous nature of the act and the loss of life caused by N. Additionally, there is (a) A case involving a group of 13 adolescents between the ages of 14 and under 18 who committed 15 robberies in 2021; (b) The case of Nguyen Khac T., born in 2005, committing murder due to conflict in 2020 (Thanh Hai, 2020); (c) The case of T.A.B, a 14-year-old who sexually assaulted two or more individuals, including Mrs. T. (74 years old) and Mrs. P. (80 years old) (Ha Viet Toan, 2022), etc. These are typical criminal cases where the offenders are children (individuals under 16 years old according to Vietnamese law).

The aforementioned cases serve as evidence of the quantity, severity, and nature of criminal acts committed by individuals under 16 years old. These acts infringe upon various social relationships protected by the Criminal Law, mainly encompassing rights related to ownership, the right to protect life, health, dignity, and human integrity. In light of this situation, policies concerning criminal offenses committed by children have been developed. However, due to various reasons, these policies remain loose and incomplete, especially the criminal prosecution policy regarding offenses committed by children. The 1985 Criminal Code and the 1999 Criminal Code have provisions that reflect special criminal prosecution policies for juvenile offenders, such as principles of handling juvenile offenders, age limits and scope of criminal responsibility, punishment, sentencing decisions, and measures for handling juvenile offenders... However, these provisions are still limited and have many illogical aspects, particularly regarding heavy penalties and detention measures.

The 2015 Criminal Code of the Socialist Republic of Vietnam has introduced several notable points in criminal policy concerning juvenile offenders, particularly in criminal prosecution. These include narrowing the scope of criminal responsibility for children, enhancing specific provisions on the principles and purposes of applying penalties and restorative justice measures, and diversifying related regulations (such as provisions concerning legal representatives, access to information, and personal data protection). These developments have demonstrated significant progress in prioritizing special criminal policy for this group. However, there is a continued need for further improvement of regulations related to the criminal prosecution policy for juvenile offenders. Based on this premise, this article focuses on addressing the main question: How is the current criminal handling policy for juvenile offenders in Vietnam regulated, and what solutions are needed to enhance its implementation effectiveness? In the process of answering this central question, the article addresses the following sub-questions:

1. What are the provisions of the current Vietnamese criminal law regarding the criminal handling of persons under 16 years old?
2. Has the current criminal handling policy ensured the lawful rights and interests of juvenile offenders?
3. What are the limitations and shortcomings in implementing the criminal handling policy for juvenile offenders?
4. What priority solutions are needed to improve the effectiveness of the criminal handling policy for juvenile offenders in Vietnam?

These issues are explored based on the study of theoretical aspects of criminal policy in general and the specific criminal prosecution policy for juvenile offenders in Vietnam.

Furthermore, the article aims to analyze the orientation for constructing and improving the criminal prosecution policy for juvenile offenders. Drawing upon scientific and practical foundations, the article presents fundamental solutions that should be prioritized in the implementation process of this policy. The research utilizes methods such as policy analysis and comparative analysis. The research findings reveal limitations and fundamental solutions regarding the penalty policy for offenders under 16 years old in Vietnam.

2. Literature review

Research on the situation of child crimes and related to the policy of criminal for of children committing crimes in Vietnam can include the following studies: Dao Tri Uc (2020) with “Vietnamese Criminal Law, Volume 1: General Issues”; Le Van Cam (2005) with “Reference Book: Fundamental Issues in Criminal Law Science (General Part)”; Pham Van Loi (2007) with “Criminal Policy in the Renovation Period in Vietnam”; Le Van Cam (2010) with “Reference Book After University: Fundamental Issues in Criminal Law Science (General Part)”; Ngo Hoang Oanh (2012) with “The situation of juvenile crimes, reality, causes, and solutions”; Vo Khanh Vinh (2015) with “Policy of Law: Concept and Indicators”; Vo Khanh Vinh (2015) with “Objectives, Priorities, and Principles of Current Vietnamese Legal Policy”; Hoang Minh Duc (2016) with “Criminal Policy for Juveniles in Current Vietnam”; Truong Quang Vinh (2016) with “Criminal Policy Applied to Under-18 Individuals Committed Crimes as stipulated in the Criminal Law 2015”; Nguyen Ngoc Hoa (2018) with “Scientific Commentary on the 2015 Criminal Law, Amended in 2017”; Thanh Hai (2020) with “Heartbreaking Serious Cases Committed by Juveniles”; Vu Thi Phuong (2020) with “Protecting the Human Rights of Children through Vietnamese Criminal Law”; Thien Thanh (2021) with “When Children Commit Crimes”; University of Law Hanoi (2021) with “Criminal Law Course (General Part)”; Le Thi Diem Hang (2022) with “Protecting the Human Rights of Certain Vulnerable Groups - International Standards and Internalization in the Vietnamese Criminal Law”; Tran Nguyen Tu (2022) with “Law and International Principles on the Rights of Children”; Ha Viet Toan (2022) with “Under-16 Individuals Committing Rape and Challenges in Investigation, Prosecution, and Trial”.

3. Methodology

The article employs a combination of legal scientific research methods to analyze and clarify the criminal handling policy for juvenile offenders in Vietnam, focusing on its developmental orientation and fundamental solutions in the current context.

First, the doctrinal legal research method is used as the foundational approach to analyze the current legal provisions related to criminal liability and the measures applied to offenders under 16 years old as stipulated in the Vietnamese Criminal Code. This method helps to systematize and clarify the existing legal framework, thereby assessing the appropriateness of the criminal policy for this particular group.

Second, the comparative legal method is applied to compare and analyze changes in Vietnam’s criminal law provisions across different legislative periods (especially the Criminal Codes of 1985, 1999, and 2015, along with subsequent amendments). At the same time, the article also refers to certain international legal standards (such as the United Nations Convention on the Rights of the Child – UNCRC, the Beijing Rules, etc.) to place Vietnamese law in a broader comparative context and align with international trends in juvenile criminal justice.

Third, the analysis and synthesis of documents method is used to process legal, theoretical, and practical materials related to the research topic. Through this, the article identifies the

principles and core elements of the criminal handling policy for juveniles, forming the basis for proposing appropriate policy reform directions.

Finally, the article applies the policy evaluation method based on secondary research results from practical reports, statistical data, and expert opinions. This evaluation aims to determine the level of effectiveness, feasibility, and limitations in policy implementation, thereby proposing priority solutions to improve efficiency and ensure the rights of children during criminal proceedings.

4. Results and Discussion

4.1. Research on criminal prosecution policy in Vietnam

In the process of establishing legal regulations, each country needs to base on a specific orientation that reflects the state's viewpoint towards one or more social relationships requiring regulation and protection (Vo Khanh Vinh, 2015). This orientation is manifested through "legal policy" - principles and basic directions formulated by the Party and the State to create a sound basis for the use of legal regulation, the correctness of organizational and operational activities of state agencies, and the development of citizens' awareness and law-abiding behavior (Dao Tri Uc, 2000).

Criminal policy is a specialized branch of legal policy that defines orientations and principles for the use of criminal law in crime prevention and control (Dao Tri Uc, 2000). The criminal policy comprises four closely related and unified components: "crime prevention policy, criminal law policy, criminal procedural law policy, and criminal enforcement policy" (Pham Van Loi, 2007). Therefore, criminal law policy is a crucial component of criminal policy. Based on the maximum approximation to international law, the state will formulate criminal law policy that reflects viewpoints and requirements stipulated in specific criminal law provisions regarding the scope of criminal responsibility and penalties for offenders (Vo Khanh Vinh, 2015).

Criminal law policy identifies the fundamental directions that have a guiding nature for the state's legislative and criminal law application activities, aiming to ensure the stability of the criminal legal system, enhance the protection of human rights and social interests, and contribute to the fight against crime (Le Van Cam, 2010). Criminal prosecution policy is understood as the Party's and the State's approach and direction in applying criminal law to handle significant socially harmful behaviors regulated by law, as well as guiding the activities of judicial agencies in the process of criminal law enforcement. In other words, criminal prosecution policy can also be understood as a policy for holding criminal responsibility.

4.2. Criminal prosecution policy for children according to Vietnamese law

The United Nations Convention on the Rights of the Child (CRC) defines the basic rights of children. Article 1 states: "A child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier" (Tran Nguyen Tu, 2022). Thus, it is understood that CRC defines children as individuals under 18 years old, and in specific circumstances, if applying a different age is beneficial to children, a separate age threshold can be established for that case. Furthermore, countries can divide the age of children into different groups to have specific policies suitable for each age group. Consequently, in international legal documents, the terms "children" and "juveniles" are used interchangeably, as stated in point 2.1 under item a of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice: "Juvenile means a child or young person under the age of eighteen years. The age limit below which children shall be presumed not to have the capacity to infringe penal laws shall be determined by law, and the capacity of a

child or young person to understand and to be held responsible for infringing penal laws shall be determined in a way appropriate to his or her age and maturity.”

However, according to Vietnamese law, these two terms are not understood in the same way due to their different scopes. “Juvenile” is defined as “a person under 18 years old” (Article 1, Clause 1, Civil Code 2015), while according to Article 1 of the Law on Children - the primary law concerning this group, “children” are individuals under 16 years old¹. Therefore, the concept of “children” has a narrower scope than the concept of “juveniles”. It can be understood that children are juveniles, but juveniles are not always children.

Hence, criminal policy, specifically criminal prosecution policy when applied to juveniles, also applies to children. Specifically, the provisions for individuals under 18 years old who commit crimes in the Criminal Code 2015 will also apply to children when they are the subjects of the crime.

4.3. Regulations on the Criminal Prosecution of Children as Offenders in the Vietnamese Criminal Law from 1985 to Present

Throughout the stages of legal development, the National Assembly of the Socialist Republic of Vietnam has enacted legislative texts in the field of criminal law to align with the prevailing criminal situation during each period. Consequently, the legislative texts enacted by the National Assembly during different periods include the 1985 Criminal Law (amended and supplemented in 1989, 1991, 1992, and 1997), the 1999 Criminal Law (amended and supplemented in 2009), and the 2015 Criminal Law (amended and supplemented in 2017). The provisions regarding child offenders first appeared in the 1985 Criminal Law in a dedicated and centralized chapter - Chapter VII of the 1985 Criminal Law comprising 11 articles (from Article 57 to Article 67); Chapter X of the 1999 Criminal Law with 10 articles (from Article 68 to Article 77); and Chapter XII of the 2015 Criminal Law with 17 articles (from Article 90 to Article 107).

Table 1. Comparison of some regulations on children committing crimes through the Criminal Code 1985, the 1999 Criminal Code, and the 2015 Criminal Code

Ordinal number	Criteria	Criminal Code 1985 (amended and supplemented in 1989, 1991, 1992, 1997)	Criminal Code 1999 (amended and supplemented in 2009)	Criminal Code 2015 (amended and supplemented in 2017)	Status
1	Age of liability	Person from 14 years of age but have not yet reached 16 years of age	Person from 14 years of age but have not yet reached 16 years of age	Person from 14 years of age to below 16 years of age	Amendments, additions
	Location	Chapter VII - Regulations on juvenile offenders.	Chapter III - Crime.	Chapter III - Crime.	Amendments
2	Scope of	Intentional crimes	Intentional crimes	Intentional crimes	Amend

¹ Law on Children 2016.

	liability	Serious crimes (<i>criminals causing great harm to society for which the maximum penalty frame for that crime is over five years in prison, life imprisonment or the death penalty</i>)	Very serious crimes (<i>criminals causing great harm to society for which the maximum penalty frame for that crime is up to fifteen years in prison</i>) Extremely serious crimes (<i>crimes that cause especially great harm to society for which the maximum penalty bracket for such crimes is over fifteen years imprisonment, life imprisonment or capital punishment</i>)	Very serious crimes, especially serious crimes specified in one of Articles 123, 134, 141, 142, 143, 144, 150, 151, 168, 169, 170, 171, 173, 178, 248, 249, 250, 251, 252, 265, 266, 286, 287, 289, 290, 299, 303 and 304 of the 2015 Criminal Code.	ments, additions
3	Purpose	For the purpose of education, helping them to rectify their wrongdoing, develop healthily, and become a helpful citizen.			Remain unchanged
4	Treatment measures	- Forced to be challenged - The juvenile entered the reformatory	- Education in communes, wards and towns - Put in a reformatory	<i>Measures of supervision and education:</i> - Reprimand - Mediation in the community - Education in communes, wards and towns <i>Judicial measures:</i> - Education at reform schools	Amendments, additions
5	Penalty	- Warning - Non-custodial rehabilitation - Fixed term prison	- Warning - Non-custodial rehabilitation - Monetary fine - Fixed term prison	- Warning - Non-custodial rehabilitation - Monetary fine - Fixed term prison	Additional

According to the 1985 Criminal Law, the age of criminal responsibility for children is regulated in Chapter VII - Provisions on Juvenile Offenders. This law was generally understood to only apply to juvenile offenders, with no legal basis for handling offenses

committed by adults. Therefore, in the second and third legislative amendments, lawmakers addressed this limitation by transferring the age of criminal responsibility provisions to Chapter III - Crimes of the Criminal Law.

In general, the 1985 Criminal Law stipulates that the age of criminal responsibility for child offenders starts at 14 years old. The 1999 Criminal Law and the 2015 Criminal Law have added the word “sufficient” before the age of 14 when determining the age of this group. This indicates a more precise definition of age in the legal provisions.

However, the scope of criminal responsibility for children has varied over time. According to the 1985 Criminal Law, it states, “Persons aged 14 and above but under 16 are criminally responsible for serious intentional crimes” (Article 58, 1985 Criminal Law). In contrast, the 1985 Criminal Law only stipulates two types of crimes: serious crimes and less serious crimes, with serious crimes being “crimes causing significant harm to society, punishable by imprisonment of over 5 years, life imprisonment, or the death penalty” (Article 8, 1985 Criminal Law). Therefore, under this provision, the scope of criminal responsibility for children is quite broad, as long as the offense committed by the child satisfies the highest punishment range of 5 years or more imprisonment and is committed with deliberate intent. In the 1999 Criminal Law, the scope of criminal responsibility for children was significantly narrowed. Article 12 states, “Persons aged 14 and above but under 16 are criminally responsible for very serious intentional crimes or particularly serious crimes” (Article 12, 1999 Criminal Law). The 1999 Criminal Law classifies crimes into four categories: less serious crimes, serious crimes, very serious crimes, and particularly serious crimes. Specifically, “very serious crimes are crimes causing significant harm to society, punishable by imprisonment of up to 15 years; particularly serious crimes are crimes causing particularly significant harm to society, punishable by imprisonment of over 15 years, life imprisonment, or the death penalty”. Thus, according to the 1999 Criminal Law, the scope of criminal responsibility for children has become more limited, only applicable to offenses with a maximum punishment range of 15 years or more, while the 1985 Criminal Law’s threshold was 5 years.

The underlying objective throughout the handling of child offenders in the 1985, 1999, and 2015 Criminal Laws is education, assistance in correcting mistakes, promoting healthy development, and transforming them into useful citizens for society. This demonstrates the humane approach in the criminal justice policy and the provisions of the law.

The regulations on handling measures and penalties have become more specific through the successive legislative amendments of the Criminal Law. Regarding handling measures, the 2015 Criminal Law clearly distinguishes supervisory measures, educational measures, and judicial measures, while additionally providing for two new supervisory and educational measures: admonition and community reconciliation. The changes in handling measures not only involve name modifications but also mechanisms for implementation, reflecting a criminal justice policy that is expanding in favor of child offenders to ensure general human rights and the specific rights of children. Regarding penalties, compared to the 1985 Criminal Law, both the 1999 Criminal Law and the 2015 Criminal Law have added provisions on fines, and the penalties imposed are lower than those for adult offenders. This provision demonstrates the humane approach and priority of justice in the development of criminal justice policy by the Party and the State towards child offenders (Hoang Minh Duc, 2016).

4.4. Provisions of practical law on criminal sentencing of juvenile committing crimes in Vietnam

Limits on criminal sentencing of juveniles committing crimes in Vietnam

From the internal factors of the non-adult age of children, as well as the general policies of international law, criminal law provides safety and fairness for children, even when they are offenders. According to Gottfredson and Hirschi's perspective in "A General Theory of Crime", the low level of self-control is the basis for determining the age of criminal responsibility. Low self-control refers to the tendency to pursue short-term and immediate gratification instead of considering the long-term consequences of actions. It develops early in childhood through the effective social behaviors of parents and becomes stable from the ages of 8 to 10 (Gottfredson, M. R et al., 1990). Thus, the age of criminal responsibility depends on the individual's ability to exercise self-control, which is greatly influenced by the cultural, socio-political, and long-standing traditions of each country. Based on the psychological, physiological, physical, and cognitive characteristics of Vietnamese children, as well as the economic, political, and socio-cultural conditions, and the policies and approaches to criminal prosecution by the Party and the State in different periods, the dangerousness of crimes and the prevalence of specific types of offenses committed by children at specific times are evaluated. The 2015 Criminal Code stipulates that the minimum age of criminal responsibility is 14 years old. Therefore, the age group responsible for criminal offenses ranges from 14 to under 16 years old, which is an average age compared to other countries worldwide.

Regarding the scope of criminal responsibility for children, Vietnam's policy of protecting child offenders goes beyond setting a relatively high age of criminal responsibility. The 2015 Criminal Code also specifies the cases in which children are held criminally responsible and the cases in which children are exempted from criminal responsibility.

Firstly, the cases in which children are held criminally responsible are defined in Article 12 (2) of the 2015 Criminal Code, which significantly narrows down² the scope of criminal responsibility for children. According to this provision, a child is held criminally responsible when they commit a crime that satisfies two conditions simultaneously: First, it belongs to the category of very serious crimes or exceptionally serious crimes; second, it falls within the 28 offenses listed, such as murder (Article 123), intentional injury or harm to the health of others (Article 134), rape (Article 141), rape of a person under 16 years old (Article 142), forced sexual intercourse (Article 143), forced sexual intercourse with a person between 13 and under 16 years old (Article 144), human trafficking (Article 150), human trafficking involving a person under 16 years old (Article 151), robbery (Article 168), abduction for the purpose of seizing property (Article 169), embezzlement (Article 170), snatch theft (Article 171), theft (Article 173), destruction or intentional damage to property (Article 178), illegal production of drugs (Article 248), illegal possession of drugs (Article 249), illegal transportation of drugs (Article 250), illegal drug trafficking (Article 251), drug appropriation (Article 252), illegal organization of street racing (Article 265), illegal street racing (Article 266), dissemination of computer programs causing harm to the operation of computer networks, telecommunications networks, electronic devices (Article 286), obstruction or disruption of the operation of computer networks, telecommunications networks, electronic devices (Article 287), unauthorized access to computer networks, telecommunications networks, or electronic devices of others (Article 289), use of computer networks, telecommunications networks, electronic devices to commit theft (Article 290), terrorism (Article 299), destruction of important facilities, establishments, or means of national security (Article 303), production,

² The 1999 Penal Code defines the scope of criminal responsibility of children as "a very serious intentional crime or a particularly serious crime" (Article 12, Penal Code 1999) without specifying which crime should be understood as a whole of very serious intentional crimes and all particularly serious crimes both intentionally and unintentionally, where children are criminally responsible.

possession, transportation, use, illegal purchase or appropriation of military weapons, military technical equipment (Article 304). In addition, concerning preparatory acts, children are only held criminally responsible for the preparatory acts of murder (Article 123) and robbery (Article 168).

Secondly, the cases in which children are exempted from criminal responsibility reflect the humanitarian nature of the state towards offenders. In certain cases, children will be protected by the state by not subjecting them to criminal prosecution. If criminal proceedings have been initiated, the decision can be made to suspend the investigation, suspend the case, or declare the person not guilty. The 2015 Criminal Code has narrowed down the scope of criminal responsibility for children and expanded the range of exemptions from criminal responsibility for this group, as shown in the table below:

Table 1. Summary of the scope of criminal responsibility and the extent of exemption from criminal liability of juvenile

Criteria		Very serious crime (Belonging to 28 crimes)		Extremely serious crime (Belonging to 28 crimes)	
		A 143, 169, 170, 173, 178, 265, 266, 286, 287, 289, 290, 299, 303, 304.	123, 134, 141, 142, 144, 150, 151, 168, 171, 258, 249, 250, 251, 252.	A 143, 169, 170, 173, 178, 265, 266, 286, 287, 289, 290, 299, 303, 304.	123, 134, 141, 142, 144, 150, 151, 168, 171, 258, 249, 250, 251, 252.
Scope of criminal liability		Total	Total	Total	Total
Scope of criminal liability in case of preparation to commit a crime		Article 123 and Article 168		Article 123 and Article 168	
The scope of possible exemption from criminal liability	Satisfying Clause 2, Article 29	Total	Total	Total	Total
	Not satisfying Clause 2, Article 29 (Satisfying points b, c, Clause 2, Article 91)	Total	Are not	Are not	Are not
The scope is naturally exempt from criminal liability	Satisfying Clause 1, Article 29	Total	Total	Total	Total
	Not satisfying Clause 1, Article 29 (Satisfying points b, c, Clause 2, Article 91)	Total	Are not	Are not	Are not

Criminal sentencing measures for juvenile committing crimes in Vietnam

The system of measures for handling juvenile offenders in Vietnamese criminal law stipulates rehabilitative and educational measures that also take into account the reduction of harm to victims and the community.

Firstly, there are supervisory and educational measures:

These measures include admonition, reconciliation within the community, or educational measures at the village, ward, or town level. These are alternative measures applied in cases where juvenile offenders are exempt from criminal responsibility, and they were first recognized in the Penal Code. The value of these measures reflects a humanitarian approach and creates conditions for diverting the handling of juvenile offenders from the criminal justice system. This is a common trend in the treatment of this group in many countries worldwide, such as Sweden, Germany, Russia, Japan, Thailand, the Philippines, Australia, and Canada. Additionally, it aligns with international standards on the protection of children (Center for Human Rights and Citizen Rights Research, 2011).

Therefore, it can be understood that this is a conditional release measure aimed at limiting and preventing reoffending. Thus, in cases where juvenile offenders are exempt from criminal responsibility, besides being granted freedom, they will be subject to one of the alternative measures when the conditions for their application are met. These measures require the consent of the juveniles themselves or their legal representatives (Article 92 of the 2015 Penal Code). This consent demonstrates an acknowledgment of their mistakes and a genuine commitment to change, as well as affirms the joint efforts of the family in accompanying and protecting the sustainable future of the juveniles. The supervisory and educational measures in cases of exempting juvenile offenders from criminal responsibility are presented in the following table.

Table 2. Comparison of supervision and education measures in the case of criminal liability exemption for juvenile committing crimes

	Reprimand	Mediation in the community	Education in communes, wards and towns
Legal basis	Articles 92 and 93 of the Criminal Code	Articles 92 and 94 of the Criminal Code	
In the case of juvenile committing crimes, it is applicable	juvenile offenders are accomplices with a negligible role in the case where the crime can be very serious or particularly serious in the 28 crimes listed in Article 12 of the Criminal Code under Articles 29 and Article 12 of the Criminal Code. 91 Criminal Code.	juvenile who commit very serious crimes are exempt from penal liability under Article 91 with 14 crimes in Articles 143, 169, 170, 173, 178, 265, 266, 286, 287, 289, 290, 299, 303, 304 Criminal Code (Scope of application is narrower than reprimand)	
Obligations of the person being applied		- Apologize to the victim and compensate the victim	- To fully comply with the obligations on study and labor; - To submit to the supervision and

			education of the family, commune, ward or township; - Do not leave your residence without permission
	- Comply with the laws and regulations of the place of residence, study and work; - Present to the competent authority when required; - Participating in learning and vocational training programs organized by the locality, participating in labor in an appropriate form;		
Time application	From 3 months to 1 year	From 3 months to 1 year	From 1 year to 2 years and can be terminated early if half of the time has been served, there is much progress and is recommended by the Commune People's Committee assigned to supervise and educate

Second, judicial measures:

The rehabilitative measures are among the coercive measures in criminal justice, applied to “support or replace punishment” (Nguyen Ngoc Hoa, 2018). Therefore, along with other rehabilitative measures in general, educational measures in correctional schools increase the number of alternative measures to the most severe coercive measure (punishment) in cases where it is deemed unnecessary to apply punishment to juvenile offenders. This demonstrates a prioritization of expanding less severe handling measures than punishment for juvenile offenders.

The priority right is further reflected in the fact that educational measures in correctional schools are exclusively reserved for individuals under 18 years old who have committed offenses. Consequently, adult offenders will not be subject to this measure. The nature of this measure involves isolating the individuals from their current living environment for a certain period and placing them in a new living environment where they participate in cultural and vocational education, engage in work, and take part in cultural, artistic, physical activities, reading books, watching television, and other recreational activities organized by the school (Le Van Cam, 2015).³ The living environment itself has a rapid and significant impact on the growth and developmental tendencies of juvenile offenders. Thus, this measure serves as a means of isolating them from dangers and visible risks, providing them with opportunities for development in line with societal norms, nurturing a new and better mindset to replace their previous distorted outlook on life. This aligns with the purpose of handling juvenile offenders and encompasses the essence of the sustainable protection of children under criminal law.

³ Article 15, Decree 52/2001/ND-CP of the Government on August 23, 2001 on guiding the application of legal measures to bring to reformatories.

Third, punishment:

Punishment is the most severe coercive measure in criminal justice, which is why the priority right enjoyed by children is prominently demonstrated in this provision. With the aim of reforming and educating juvenile offenders, the application of measures for handling juvenile offenders should follow a hierarchical order. Punishment should be the last option after considering whether the case qualifies for exemption from criminal responsibility and whether alternative measures such as supervision and education can be applied. Vietnam's criminal law system encompasses seven main penalties and seven additional penalties. However, according to Article 98 of the 2015 Criminal Code, individuals under 18 years old who commit offenses are only subject to one of the following four penalties: reprimand, fine, non-custodial reform, and imprisonment. Specifically, Article 34 of the Criminal Code stipulates that "a reprimand is applied to individuals who commit less serious offenses with mitigating circumstances but do not warrant exemption from punishment". Offenses classified as less serious are not within the scope of criminal responsibility for children. Additionally, Article 99 of the Criminal Code states that "a fine is the primary penalty applicable to individuals between 16 and under 18 years old..." while children are defined as individuals between 14 and under 16 years old. Therefore, juvenile offenders are only subject to 2 out of 7 penalties (accounting for 28.5%): non-custodial reform and imprisonment. In comparison, individuals between 16 and under 18 years old who commit offenses do not receive reprimand or fines (50%). The penalty policy for juvenile offenders is most evident in the structure of penalties, where they may face significantly fewer penalties compared to adult offenders and individuals who have not yet reached the age of criminal responsibility. Secondly, half of the penalties that juvenile offenders may receive are non-deprivation of liberty penalties. Thirdly, the level of penalties that juvenile offenders may face is much lower than that of adult offenders or individuals who have not yet reached the age of criminal responsibility, as shown in Table 3. The highest possible penalty that can be applied at different stages of offenses is presented in the following table:

Table 3. Comparison of the maximum punishment that a juvenile can be imposed for one crime versus another

Penalties in applicable law	The maximum penalty that can be applied to a crime		
	Adult offenders	Persons from full 16 years old to under 18 years old commit crimes	juvenile commit crimes
Life imprisonment or death penalty	Life imprisonment or death penalty	18 years in prison	12 years in prison
Limited term prison	20 years	15 years in prison	10 years in prison
Non-custodial rehabilitation	03 years	18 months	18 months

Table 4. Comparison of the maximum punishment that a juvenile can be imposed for a crime against another offender by stage of crime

Penalties in applicable law	Crime execution stage	The maximum penalty that can be imposed		
		Adult offenders	Persons from full 16 years old to under 18 years old commit crimes	juvenile commit crimes
Life	Completed	Life imprisonment or	18 years in prison	12 years in

imprisonment or death penalty	Crime	death penalty		prison
	Unsatisfactory crime	20 years in prison	9 years in prison	4 years in prison
	Prepare to commit crime	Do not prescribe this penalty in the case of preparing to commit a crime		
Limited term prison	Completed Crime	20 years	15 years in prison (no more than 3/4 of the law)	10 years in prison (no more than 1/2 of the legal limit)
	Unsatisfactory crime	15 years (no more than 3/4 of the law)	7.5 years in prison (not more than 1/2 of the legal limit)	3.33 years in prison (no more than 1/3 of the legal level)
	Prepare to commit crime	05 years in prison	2.5 years in prison (not more than 1/2 of the legal limit)	1.67 years in prison (not more than 1/3 of the legal level)
Non-custodial rehabilitation	Completed Crime	03 years	18 months (no more than 1/2 of the amount prescribed by the law)	18 months (no more than 1/2 of the amount prescribed by the law)
	Unsatisfactory crime	2.25 years (no more than 3/4 of the law)	9 months (no more than 1/2 of the amount prescribed by the law)	6 months (no more than 1/3 of the level prescribed by the law)
	Prepare to commit crime	Do not prescribe this penalty in the case of preparing to commit a crime		

Orientation to develop criminal sentencing policies for juvenile committing crimes in Vietnam

Originating from the inherent factors of the non-adult age of children, as well as stemming from the general policies of international law, which aim to ensure safety and fairness for children even when they are offenders, criminal law provides protection for children as a distinct subject (University of Law - Hanoi National University, 2010). Children differ from adults in terms of physical and psychological development, emotional and educational needs. These differences serve as a basis for mitigating offenses committed by children in conflict with the law. These differences, along with other distinctions, are the reasons for establishing a separate legal system for minors and necessitate a unique approach to handling children (United Nations, 2022). Consequently, children who commit offenses are protected by specific and separate criminal policies. Therefore, it is necessary to establish principles and purposes for the criminal prosecution of this group that focus on education and prevention rather than punitive measures. Therefore, national criminal law provisions need to reflect:

Firstly, the age and scope of criminal responsibility for children must comply with the recommendations of international law (Sweden Child Protection Organization, 2013).

However, it is essential to determine a scope of criminal responsibility that is appropriate for the child's age and takes into account practical preventive measures. In defining the limits of specific crimes for which children may be held criminally responsible, it is important to consider clear awareness that the limits should not be overly stringent or too lenient. The aim is to prevent the possibility of reoffending by the child and address the child's avoidance and fear of punishment, particularly for behaviors that children frequently violate in reality. If non-penal measures have been unable to remedy the situation for an extended period, an expansion of the scope of criminal prosecution becomes necessary.

Secondly, to achieve the educational objectives in criminal prosecution of child offenders, it is necessary to broaden the range of handling measures, while limiting measures that involve deprivation of liberty and not applying measures that may hinder the child's opportunities for rehabilitation and community integration (such as life imprisonment or the death penalty). Instead, emphasis should be placed on strengthening monitoring and educational measures that redirect the child's behavior, aiming to restore justice for the child. Therefore, if the scope of criminal responsibility for children is expanded, careful consideration should be given to applying measures appropriate to the nature and severity of the offense, allowing children to understand the societal harm caused by their actions and at the same time limiting the likelihood of future recidivism through the severity of the law.

Thirdly, when determining the penalties for child offenders in cases where alternative diversionary measures are not applicable, it is necessary to establish penalties that are lighter than those imposed on other offender groups. However, the extent of this leniency must also be developed specifically and be appropriate in relation to the range of penalties for offenders between the ages of 16 and under 18 and for adult offenders.

By considering and implementing these priority solutions, the current criminal sentencing policy in Vietnam can be evaluated for its appropriateness, feasibility, limitations, and shortcomings. This evaluation contributes to the effective implementation of criminal sentencing policies regarding juvenile offenders in Vietnam.

Priority solutions in the process of implementing policy on criminal sentencing of children committing crimes in Vietnam

The issue of criminal policy regarding children offenders in Vietnam is not new, but it was not until the construction of the 2015 Criminal Code that restorative justice measures were officially introduced as alternative measures for cases of exemption from criminal responsibility. Along with the provisions on juvenile justice in the 2015 Criminal Procedure Code, positive signals have been sent, indicating a breakthrough in the criminal policy for juvenile offenders. However, criminal policy in general and punishment policy, in particular, are not merely changes in legal regulations; they are also shaped by the viewpoint of the Communist Party of Vietnam and implemented, enforced, and evaluated in policy applications. In this study, several existing issues in the criminal policy for children offenders in Vietnam are highlighted as follows:

Firstly, the protection of children's rights in Vietnam has been highly regarded by the Party and the State. The approach to handling children offenders has been mentioned in the resolutions of the Party. Currently, the issue of criminal policy for children offenders is addressed in Resolution No. 08/NQ-TW dated January 2, 2002, on some critical tasks of judicial work in the coming period; Politburo (2005), Resolution No. 48/NQ-TW dated May 24, 2005, on the strategy for building and completing the Vietnamese legal system by 2010 and orienting towards 2020; Politburo (2005), Resolution No. 49/NQ-TW dated June 2, 2005, on the judicial reform strategy; Directive 20/CT-TW on "Strengthening the Party's leadership

in the care, education, and protection of children in the new situation”. Among these, Resolution No. 48/NQ-TW, dated May 24, 2005, clearly states one of the orientations for building and improving the legal system, which emphasizes the need to “build and improve laws to ensure human rights, freedoms, and democracy for citizens, including strengthening the legal framework for the responsibility of state agencies in timely and coordinated construction, issuance, and enforcement of laws and international conventions of which Vietnam is a member regarding human rights” (Politburo, 2005). Regarding children offenders, the Party also directed to “emphasize the effectiveness of prevention and positive orientation in dealing with offenders” (Politburo, 2005). However, it is essential to recognize that protecting children’s rights should ensure their sustainable future development, and legal provisions should stem from reality and the nature of social phenomena rather than taking the form of “treating the symptoms of social phenomena”. The system of principles and measures for handling children offenders should be primarily focused on education, creating conditions for them to be redirected away from the criminal justice system.

The resolutions have indicated measures for judicial reform, the construction of a friendly judicial system, and the purpose of handling individuals under 18 years old who commit offenses. However, this issue is still at a modest level and has not become a major viewpoint, demonstrating a strong stance on dealing with individuals who have not yet reached criminal responsibility, including children. Meanwhile, children offending continues to be complex, and the implementation of diversionary measures is still limited. According to a summary report, “From 2019 to 2021, there were no cases where disciplinary measures were applied; only 10 cases were subject to educational measures at the commune, ward, or town level” (Improving the Legal Policy for Juveniles, 2022). This reality indicates that the judiciary still doubts the effectiveness of applying these measures due to the perceived inadequacy in the enforcement mechanism, often resorting to non-custodial reform or suspended imprisonment sentences.

Secondly, there is no unified direction in applying punishments for children offenders. The design of Vietnam’s Criminal Law still provides limited options for sanctions applicable to children in general and children offenders in particular. As a result, the prioritization of sanctions and the evaluation of their effectiveness in each judge’s decision-making may vary. Currently, Vietnam only has four main types of punishments (warning, fine, non-custodial reform, and imprisonment with a definite term), while internationally recognized typical penalties often include measures such as warning, conditional release, restitution/compensation, fine, community service, guidance and counseling, counseling/treatment requirements, education, training, or rehabilitation programs, probation, home confinement, educational institutions, and imprisonment.

Thirdly, the regulations on children justice are scattered among various legal documents, making access and enforcement challenging. It requires a strategic approach to develop comprehensive and universal documents addressing issues related to children justice.

Fourthly, the mechanism for protecting the privacy rights of children offenders is still limited. Specifically, information channels and media, including the press, still seriously violate the laws on protecting the private lives of children. They often provide detailed information about the offenses, the locations of incidents, the residential addresses of the children offenders, as well as images of the offenders or their parents and relatives. This violation affects the dignity, psychological well-being, and the ability of children offenders to reintegrate into society (Derrick Armstrong, 2005).

Solutions to implement criminal policies for children committing crimes in Vietnam should prioritize addressing the above limitations. Therefore, solutions should address the following problems:

Firstly, it is necessary to research and issue a resolution by the Central Party Executive Committee of the Communist Party of Vietnam (Ngo Hoang Oanh, 2012) on the legal policy for children offenders. This resolution should focus on: i) establishing and improving legal policies and the legal system regarding children justice; ii) criminal justice policies that emphasize education and prevention; iii) determining the judicial procedures for children; iv) guidelines for the implementation of criminal sentences for children offenders. This resolution will provide the political foundation for the comprehensive design of legal policies regarding children justice.

Secondly, the Supreme People's Court should issue a resolution guiding the application of criminal responsibility for children in general and children offenders in particular. This resolution should provide guidance on: i) the principles of applying criminal responsibility to children, including specific guidelines for children offenders; ii) principles for determining the main penalties among the available sanctions for offenders aged 16 and older and for children offenders; iii) principles for applying additional penalties; iv) determining the level of maturity when deciding on penalties or when considering diversion measures for children offenders.

Thirdly, it is important to develop a Private Law on Children that includes additional diversion measures such as community service, guidance and counseling, counseling/treatment requirements, educational, training, or rehabilitation programs, probation, and home confinement. These measures should be tailored to the physical and cognitive development as well as the living circumstances of individual children offenders, aiming to enhance the effectiveness of their application.

Fourthly, the government should issue a decree on sanctions for cases involving the violation of the privacy rights of children offenders. This decree should clearly stipulate that media outlets or individuals who disclose personal information, images, or the residential addresses of children offenders and their relatives will face administrative penalties. If the consequences lead to self-harm or suicide, criminal prosecution should be considered depending on the severity of the privacy violation.

5. Conclusion

In summary, the analysis above clearly demonstrates the compassionate, humane, and progressive nature of the Party's criminal policy reflected in the provisions of Vietnamese criminal law in protecting the privileged judicial rights of children compared to the group of adults and the group of juveniles who have transitioned out of the children age (from 16 to under 18 years old). The criminal policies aim to build a friendly and restorative justice system by redirecting children away from the criminal justice system. Even when children are subjected to criminal justice proceedings, their privileged judicial rights grant them lighter provisions compared to other offenders. However, the enforcement of these laws still faces various difficulties in practice. On one hand, this is due to the complexity of the laws, and on the other hand, there are still many shortcomings in the policies themselves. Developing a criminal policy that emphasizes education and prevention for child offenders is not an easy task. Transforming policy into legal provisions and effectively implementing them poses even greater challenges. Therefore, this article highlights key issues in the criminal concerns about

children delinquency and proposes prioritized solutions to address these limitations in the future.

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