

The Regulations on Organized Crimes in the Penal Code of Vietnam and Some Recommendations

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Abstract - The law is considered as an important tool in preventing organized crime. Many developed countries have formulated strict rules, even issued the law on organized crime prevention. In the trend of integration and development, many organizations of transnational crimes are formed. Thus, the improvement of the legal system is an inevitable consequence. Within the scope of the article, the author wants to clarify some provisions in the Penal Code, thereby making recommendations to improve the regulations on organized crime. In this article, we analyze some of the situations of the regulations on organized crimes in the penal code of Vietnam and some recommendations.

Keywords - *organized crime, penal code, crime prevention and control.*

Since Communist Party of Vietnam initiated the renovation in 1986, the socio-economic situation has made new developments, people's lives have been constantly improved. However, there are still many difficulties and challenges. The negative side of the market mechanism and international integration, is becoming more obvious. There are signs of degradation in political ideology, morality, lifestyle. The differentiation between the rich and poor tends to increase. In recent years, the operation of criminal organizations has been very complicated even serious crimes have not been controlled effectively. Criminal organizations are operating in big cities, at complex points of security and order, seriously violating the rights and interests of the State, society and people. The reasons for this are the shortcomings in legal system; a lack of guidelines for law enforcement; the

difficulties in handling organized crime. The Penal Code in 2015, amended and supplemented in 2017 (hereinafter referred to as Penal Code 2015), only stipulates criminal prosecution for corporate legal entities with prescribed crimes in Article 76. There is no provision for criminal prosecution for an organization in general. In fact, a criminal organization may be formed due to the connection between people to commit criminal offences... However, when these organizations are prosecuted for criminal acts, only the individuals of the organizations will face penal liability.

The study of the Penal Code 2015 shows that there are no specific regulations on "organized crime" and "criminal organization". The Penal Code 2015 only regulates the circumstance of "committing crimes in an organized manner" in the part of general provisions

and in the part of criminal offences. In the part of general provisions, the circumstance “committing crimes in an organized manner” is stipulated in 03 articles:

+ Article 3. Rules for punishing crimes: Criminal offences committed by employment of deceitful methods; **in an organized manner**, in a professional manner, or with intent to inflict extremely serious consequences shall be strictly punished.

+ Article 17. Complicity: **Organized crime** is a form of complicity in which the accomplices cooperate closely in committing the crime;

+ Article 52. Aggravating factors: **Organized crime**;

In the part of criminal offences, the circumstance of “*committing crime in an organized manner*”, is defined as the basis for the determination of a crime or sentence bracket in 142 articles. Of which, 134 articles stipulate that “*committing crime in an organized manner*” is the nature of crime and 08 articles stipulate that “*organizing*” is an objective behaviour in criminal constitution (**Article 120**. Organizing, coercing, instigating illegal emigration for the purpose of opposing the people's government; **Article 183**. Organization of child marriage; **Article 187**. Surrogacy for commercial purposes; **Article 255**. Facilitation of illegal use of narcotic substances; **Article 265**. Organizing illegal street races; **Article 322**. Organizing gambling or running gambling-dens; **Article 348**. Brokering illegal entry, exit or stay in Vietnam; **Article 349**. Organizing, brokering illegal emigration). However, the factor of “organizing” in these articles is different from the circumstance of “committing crime in an organized manner”. Because “committing crime in an organized manner” requires two or more people with close cooperation and assignment. While the above crimes require only one person to organize the others into committing criminal acts. The organizer is obviously the criminal but the organized ones are not.

Vietnam has joined the United Nations Convention against transnational organized crime. This Convention came into force in Vietnam since July 8th

2012. Therefore, it is necessary to internalize the United Nations Convention against transnational organized crime. However, in the Penal Code 2015, the circumstance of “establishing” or “joining” «an organization that acts against the people's government”, “a terrorist organization or an organization sponsoring terrorism”, “a group of criminals”, is only regulated in 05 articles (Article 14, Article 109, Article 113, Article 134 and Article 299):

+ Article 109, 113, 299 stipulate: “Any person who establishes or joins an organization that acts against the people's government” is an objective behaviour in criminal constitution of **Article 109. Activities against the people's government**; “Establishing, joining a terrorist organization or an organization sponsoring terrorism for the purpose of opposing the people's government” is an objective behaviour in criminal constitution of **Article 113. Terrorism to oppose the people's government**; “Establishing or participating in a terrorist organization or terrorism-financing organization” is an objective behaviour in criminal constitution of **Article 299. Terrorism**.

+ **Article 14. Preparation for crimes**: “Preparation for a crime means finding, preparing tools, equipment, or other conditions for the crime, or *establishing, joining a group of criminals*”. Also, Article 14 clearly prescribes: A person who prepares for any of the crimes specified in Articles 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 123, 134, 168, 169, 207, 299, 300, 301, 302, 303, 324 hereof shall bear criminal responsibility. **Article 134. Deliberate infliction of bodily harm upon another person**: “Any person who prepares a weapon, explosive, acid, dangerous chemical; *establishes or joins a group of criminals* to inflicts bodily harm upon another person...” This is a situation of **preparation for deliberate infliction of bodily harm upon another person**.

The Penal Code 2015 does not have specific chapters and articles on organized crime. The criminal policy is not strict enough and it does not highly differentiate complicity from criminal organizations. The Penal Code 2015 only allow the fight against criminal organizations through the fight against

crimes committed by those organizations. There is no legal basis to fight directly and timely prevent the formation of criminal organizations. Hence, the author suggest that The Penal Code should have additional provisions on "a group of criminals", "criminal organizations" and "organized crime"; also consider acts of establishing, joining or sponsoring criminal organizations as bearing penal liability. The Penal Code should not only define the act of establishing or joining "an organization that acts against the people's government", "a terrorist organization or an organization sponsoring terrorism", "a group of criminals" as criminal in 05 articles. Specifically, the Penal Code should have a separate chapter on organized crime, which clearly defines the concepts of "a group of criminals", "criminal organization" and "organized crime". It should provide the punishing rules and sentence bracket for organized crime. It is crucial to regulate clearly acts of joining a group of criminals and criminal organizations in order to internalize clause 1, Article 5 of the UN Convention against transnational organized crime. Simultaneously, we need to consult selectively the criminal legislative experience of some countries in the world on organized crime, to improve the provisions of Vietnam's Penal Code. Which will enhance the efficiency in the prevention against this dangerous crime?

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