

HO CHI MINH NATIONAL ACADEMY OF POLITICS

TRAN HA THU

**IMPROVEMENT OF THE LAW ON PENALTIES
APPLICABLE TO OFFENDERS UNDER 18 YEARS OF
AGE IN VIET NAM**

**SUMMARY OF THE DOCTORAL THESIS
MAJOR: THE THEORY AND HISTORY OF STATE AND LAW
Code: 9 38 01 06**

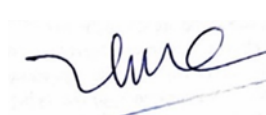
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INTRODUCTION

1. The necessity of the thesis

Individuals under 18 years of age constitute a distinct category of offenders who are still in the process of physical, psychological, and cognitive development. In recognition of their developmental immaturity, together with their significant potential for education, rehabilitation, and reintegration, contemporary juvenile justice policy has progressively embraced a child-centred approach that prioritises education, rehabilitation, and developmental support. Consequently, the nature and function of punishment within the juvenile justice framework have been fundamentally redefined. Rather than serving as the primary response to offending, punishment is regarded as a measure of last resort, to be imposed only when less restrictive and more constructive measures are considered inadequate.

In Viet Nam, the promulgation of the Law on Juvenile Justice in November 2024 represents a fundamental shift in the legislative philosophy governing the sentencing of offenders under the age of eighteen. For the first time, the legal framework regulating criminal sanctions applicable to juvenile offenders has been separated from the Penal Code and codified in a dedicated statute exclusively governing juvenile justice, thereby reflecting a distinct normative approach tailored to the legal status, developmental needs, and rehabilitative objectives applicable to persons under 18 years of age. Notwithstanding these significant legislative developments, a number of shortcomings remain and warrant further improvement. These deficiencies not only reveal substantial theoretical gaps in the existing scholarship on the improvement of the legal framework governing criminal penalties applicable to offenders under the age of eighteen in Viet Nam, but also demonstrate an inherent inconsistency between the objective of ensuring education and rehabilitation for juvenile offenders and the current structure of the sentencing framework. Furthermore, they expose a disparity between the reform orientation embodied in the Law on Juvenile Justice 2024 and the practical capacity to implement its sentencing provisions effectively. These unresolved issues constitute significant scientific and legal questions that require further in-depth research and systematic resolution..

The imperative to further improve the law on penalties applicable to offenders under 18 years of age should also be considered within the broader context of Viet Nam's ongoing legal and institutional reforms. At present, the country is pursuing comprehensive legislative reform initiatives aimed at improving the law-making process, restructuring the legal system, and modernizing both legislative drafting and law enforcement in the new era. These strategic orientations are articulated in the Documents of the Fourteenth National Congress of the Communist Party of Viet Nam, as well as in a series of key Party policy instruments, including Conclusion No. 119-KL/TW on reforming and improving the legislative process; Conclusion No. 09-KL/TW on restructuring and further developing the Vietnamese legal system to meet the country's development requirements in the new era; Resolution No. 27-NQ/TW on the continued development and improvement of the socialist rule-of-law State of Viet Nam in the new period; together with other Party resolutions and conclusions concerning judicial reform, particularly Resolution No. 66-NQ/TW on reforming law-making and law enforcement to meet the requirements of national development under contemporary conditions.

For the foregoing reasons, the author has chosen “*Improvement of the law on penalties applicable to offenders under 18 years of age in Viet Nam*” as the topic of this thesis in the field of Theory and History of State and Law.

2. Research purpose and tasks

2.1. Research purpose

On the basis of clarifying the theoretical foundations for the improvement of the law on penalties applicable to offenders under 18 years of age, the thesis assesses the current level of development and adequacy of the relevant legal provisions, identifies the orientations, and proposes solutions for improving the law on penalties applicable to offenders under 18 years of age in Viet Nam..

2.2. Research tasks

To achieve the above research purpose, the thesis undertakes the following tasks:

- The thesis reviews domestic and international studies relevant to the research topic, identifies the contributions that may be built upon, and determines the existing research gaps and issues requiring further investigation. On that basis, it develops the research hypotheses and formulates the research questions.

- The thesis clarifies the theoretical foundations for the improvement of the law on penalties applicable to offenders under 18 years of age, including the concept, characteristics, and role of such legal improvement; identifies the aspects of the law requiring improvement, the criteria for assessing the extent of legal improvement, and the conditions necessary to ensure its effective implementation. It also examines the experience of selected countries in improving the law in this field and draws lessons for Viet Nam.

- The thesis provides an overview of the process of improving the law in Viet Nam and evaluates the current state of the improvement of the law on penalties applicable to offenders under 18 years of age. It identifies the strengths, shortcomings, and underlying causes of the existing legal framework..

- The thesis identifies the orientations and proposes solutions for the improvement of the law on penalties applicable to offenders under 18 years of age in Viet Nam.

3. Research Object and Scope

3.1. Research Object

Approached from the perspective of the Theory and History of State and Law, the thesis takes the improvement of the law on penalties applicable to offenders under 18 years of age in Viet Nam as its overarching objective, thereby guiding the entire process of analysis, evaluation, and formulation of legal reform proposals.

3.2. Scope of the Research

- **Substantive scope:** From the perspective of the Theory and History of State and Law, the thesis examines the theoretical foundations for the improvement of the law and assesses the current degree of development and adequacy of the legal provisions governing the concept and purposes of penalties, the principles governing their application, the

system of penalties, and the determination of penalties applicable to offenders under 18 years of age.

- **Geographical scope:** The thesis focuses on Viet Nam while drawing on the experiences of four jurisdictions: the United Kingdom, France, China, and the Republic of Korea. The United Kingdom and France represent the two principal legal traditions, namely the common law and civil law traditions, whereas China and the Republic of Korea represent Asian jurisdictions that share a number of relevant similarities with Viet Nam.

- **Temporal scope:** The thesis covers the period from 2015 to 2026, commencing with the promulgation of the 2015 Penal Code. To ensure the systematic and historical coherence of the research, the thesis also provides an overview of the formation and development of the relevant law since 1945 in order to elucidate the historical foundations of the current legal provisions. This historical overview does not, however, fall within the scope of the assessment of the current state of the law.

4.Theoretical basis and research methodology

4.1.Theoretical basis

The thesis is grounded in the theoretical foundations of Marxism–Leninism, Ho Chi Minh Thought, and the perspectives of the Communist Party of Viet Nam on the State and law, the development of the socialist rule-of-law State, and the establishment of a legal system capable of meeting the demands of the new era. Particular emphasis is placed on legislative and judicial reform in the context of international integration, digital transformation, and institutional innovation.

4.2.Research methodology

The thesis employs the methods of synthesis, analysis, historical inquiry, comparative legal research, sociological investigation, in-depth interviews, and case studies. These methods are applied in a flexible and methodologically appropriate manner throughout all chapters of the dissertation.

5.New points drawn from research

- The thesis provides additional scholarly foundations for the improvement of the law on penalties applicable to offenders under 18 years of age in Viet Nam. Specifically, it clarifies the concept, characteristics, and role of improving the law in this field; develops a set

of criteria for assessing the degree of improvement of the law on penalties applicable to offenders under 18 years of age; and identifies the conditions necessary to ensure the effective improvement of such law in Viet Nam.

- The thesis assesses the current degree of improvement of the law on the basis of the established criteria. By examining this assessment in relation to the conditions necessary to ensure legal improvement, the dissertation proposes several groups of solutions for improving the law on penalties applicable to offenders under 18 years of age in Viet Nam.

6. Scientific and Practical Significance of the Thesis

6.1. Scientific Significance

The dissertation contributes scientific grounds for improving the law on penalties applicable to offenders under 18 years of age and lays the foundation for promoting the development of a specialized legal system for persons under 18 years of age in Vietnam.

6.2. Practical Significance

The thesis provides a scientific basis for the review and assessment of the law on penalties applicable to offenders under 18 years of age in Vietnam. It also serves as an in-depth reference material supporting competent authorities and persons in the implementation of the law on penalties applicable to offenders under 18 years of age. Furthermore, it constitutes a valuable resource for the dissemination and public education of juvenile justice law in general and the law on penalties applicable to offenders under 18 years of age in particular.

The thesis is also a useful supplementary resource for teaching and advanced legal research at educational and research institutions. In addition, it constitutes a valuable reference work and contributes to opening up new avenues of research on penalties applicable to offenders under 18 years of age.

7. Structure of the Thesis

In addition to the Introduction and the Conclusion, the thesis consists of four chapters divided into twelve sections, followed by a list of references and appendices.

Chapter 1

LITERATURE REVIEW

1.1. REVIEW OF DOMESTIC STUDIES

1.1.1. Studies on Penalties and the Law on Penalties Applicable to Offenders under 18 Years of Age

The thesis provides an overview of relevant scholarly works in the form of monographs and reference books, research projects, doctoral theses, and academic articles that offer valuable theoretical and practical insights.

1.1.2. Studies on Law Reform and the Improvement of the Law on Penalties Applicable to Offenders under 18 Years of Age

Studies on law reform and the improvement of the law on penalties applicable to offenders under 18 years of age provide valuable references for the theoretical and practical issues examined in this thesis.

1.2. REVIEW OF FOREIGN STUDIES

The thesis reviews foreign studies under the same two categories applied to domestic studies. The findings of these studies provide valuable insights into global research trends concerning the improvement of the law on penalties applicable to offenders under 18 years of age.

1.3. ASSESSMENT OF STUDIES RELATED TO THE THESIS TOPIC AND ISSUES REQUIRING FURTHER RESEARCH

1.3.1. Assessment of the Existing Research

The thesis provides an assessment of both domestic and foreign research. It finds that no in-depth study has yet been conducted on the improvement of the law on penalties applicable to offenders under 18 years of age in Viet Nam from the perspective of the Theory and History of State and Law.

1.3.2. Issues Requiring Further Research

From a theoretical perspective, and based on the approach of the Theory and History of State and Law, the thesis further develops a theoretical framework for the improvement of the law on penalties applicable to offenders under 18 years of age in Viet Nam. This framework encompasses the concept, characteristics, and role of improving the law on penalties applicable to offenders under 18 years of age; the substantive content of the law and the criteria for assessing its level of improvement; the conditions ensuring its effective improvement; and a study of the experience of several countries in improving the law on penalties applicable to offenders under 18 years of age, from which reference values for Viet Nam are identified

From a practical perspective, the thesis further examines the process of the formation and improvement of the law on penalties applicable to offenders under 18 years of age. It assesses the level of improvement of the current legal provisions on penalties applicable to offenders under 18 years of age in Viet Nam and identifies their strengths, shortcomings, and the underlying causes of those shortcomings.

With regard to orientations and solutions, the thesis further examines and systematizes the orientations on improving the law on penalties applicable to offenders under 18 years of age and proposes appropriate solutions for its improvement in light of the evolving domestic and international contexts.

1.3.3. Research Hypotheses and Research Questions

1.3.3.1. Research Hypotheses

Although the law on penalties applicable to offenders under 18 years of age in Viet Nam has undergone significant development and has increasingly aligned with international standards on juvenile justice, it continues to exhibit a number of shortcomings. These include its failure to fully achieve the objectives of education, rehabilitation, and social reintegration due to the absence of a coherent theoretical foundation; the insufficient reflection of the distinctive characteristics of offenders under 18 years of age in the legal provisions governing the concept, objectives,

principles for the application of penalties, the structure of the system of penalties, and sentencing mechanisms; as well as the lack of conditions necessary to ensure the flexible and effective application of such legal provisions. If these shortcomings and their underlying causes are comprehensively identified and assessed on the basis of legal theory, the existing legal framework, law enforcement practice, international standards, and comparative experience from other jurisdictions, it will be possible to develop appropriate orientations and solutions for improving the law in accordance with Viet Nam's conditions, thereby enhancing the effectiveness of education, rehabilitation, social reintegration, and the prevention of reoffending among offenders under 18 years of age.

1.3.3.2. Research Questions

General Research Question

How should the law on penalties applicable to offenders under 18 years of age in Viet Nam be improved so as to ensure both the objective of crime prevention and the protection of children's rights, while remaining consistent with international trends in juvenile justice?

Specific Research Questions

First, what theoretical foundations underpin the improvement of the law on penalties applicable to offenders under 18 years of age? What lessons can Viet Nam draw from the experience of selected countries in improving the law on penalties applicable to offenders under 18 years of age?

Second, how has Vietnamese law on penalties applicable to offenders under 18 years of age evolved through different historical periods? What are the strengths and shortcomings of the current law on penalties applicable to offenders under 18 years of age in Viet Nam, and what are the underlying causes of those shortcomings?

Third, what orientations should shape the improvement of the law on penalties applicable to offenders under 18 years of age in Viet Nam at the present stage? What solutions should be implemented to improve the law on penalties applicable to offenders under 18 years of age in Viet Nam?

Chương 2

THEORETICAL FOUNDATIONS FOR THE IMPROVEMENT OF THE LAW ON PENALTIES APPLICABLE TO OFFENDERS UNDER 18 YEARS OF AGE

2.1. THE CONCEPT, CHARACTERISTICS, AND ROLE OF THE IMPROVEMENT OF THE LAW ON PENALTIES APPLICABLE TO OFFENDERS UNDER 18 YEARS OF AGE

2.1.1. The Concept of the Improvement of the Law on Penalties Applicable to Offenders under 18 Years of Age

Penalties Applicable to Offenders under 18 Years of Age

Penalties applicable to offenders under 18 years of age constitute the most severe form of legal sanction. They are governed by a specialised legal regime distinct from that applicable to adult offenders and are imposed by a court upon persons who had not attained the age of 18 at the time of the commission of the offence. Rather than placing primary emphasis on retribution, such penalties are principally intended to educate and rehabilitate young offenders, provide them with opportunities to remedy their wrongdoing, support their continued development, and facilitate their reintegration into society as responsible and productive citizens.

Law on Penalties Applicable to Offenders Under 18 Years of Age

The Law on Penalties Applicable to Offenders Under 18 Years of Age in Viet Nam constitutes a coherent body of specialised legal norms governing the objectives, principles, system, and judicial determination of penalties applicable to offenders under 18 years of age. It is founded upon a distinct philosophy of juvenile justice and seeks to strike an appropriate balance between the need to protect social order and the objectives of education and rehabilitation, while safeguarding offenders' prospects for continued development.

Improvement of the Law on Penalties Applicable to Offenders Under 18 Years of Age in Viet Nam

Improvement of the Law on Penalties Applicable to Offenders Under 18 Years of Age is the process of refining and developing this body of law so as to ensure that it more adequately reflects the distinctive characteristics and circumstances of offenders under 18 years of age, complies with the

requirements of international law, and remains compatible with the conditions and resources available at the national level.

2.1.2. Characteristics of the Improvement of the Law on Penalties Applicable to Offenders Under 18 Years of Age

First, it is a continuous and purpose-oriented process of legal improvement undertaken by the State. *Second*, it entails changes to both the substantive content and the formal structure of specialised legal norms. *Third*, it accords priority to the education and rehabilitation of offenders over retribution. *Fourth*, it seeks to maximise flexibility and adaptability in the criminal justice treatment of this particular category of offenders. *Fifth*, it is associated with the development of a legal system structured around an offender-under-18-centred approach.

2.1.3. The Role of Improving the Law on Penalties Applicable to Offenders Under 18 Years of Age

First, it contributes to the concretisation of the orientations of the Communist Party of Viet Nam and the State's humanitarian policy concerning the treatment of offenders under 18 years of age. *Second*, it contributes both to the protection of persons under 18 years of age and to the maintenance of public safety. *Third*, it contributes to safeguarding the specific rights of offenders under 18 years of age. *Fourth*, it contributes to compliance with the requirements of international law while ensuring compatibility with the conditions and resources available at the national level.

2.2. SUBSTANTIVE CONTENT OF THE LAW ON PENALTIES APPLICABLE TO OFFENDERS UNDER 18 YEARS OF AGE

2.2.1. Substantive Content of the Law on Penalties Applicable to Offenders Under 18 Years of Age

The dissertation focuses on the following groups of legal norms: (i) the concept and purposes of imposing penalties; (ii) the principles governing the imposition of penalties; (iii) the system of penalties, including the types and severity of penalties; and (iv) the determination of penalties.

2.2.2. Criteria for Improving the Law on Penalties Applicable to Offenders Under 18 Years of Age

The improvement of the Law on Penalties Applicable to Offenders Under 18 Years of Age should be assessed against both substantive and formal criteria: (i) the substantive criteria comprise fairness and reasonableness, rehabilitative orientation, and appropriateness and compatibility; and (ii) the formal criteria comprise consistency, stability, clarity and accessibility, and effectiveness.

2.3. CONDITIONS FOR ENSURING THE IMPROVEMENT OF THE LAW ON PENALTIES APPLICABLE TO OFFENDERS UNDER 18 YEARS OF AGE

The improvement of the Law on Penalties Applicable to Offenders Under 18 Years of Age must be supported by the following fundamental conditions: (i) political conditions, including the orientations and viewpoints of the Communist Party of Viet Nam, the political awareness of organisations and Party members, and inspection and supervisory activities; (ii) legal conditions, including the legal system, legal consciousness, and institutions responsible for addressing legal violations; (iii) socio-cultural conditions (including the community's standards of legal culture and broader social awareness); and (iv) resource-related conditions (including human resources, financial resources, and the requisite physical, technical, and technological infrastructure).

2.4. IMPROVEMENT OF THE LAW ON PENALTIES APPLICABLE TO OFFENDERS UNDER 18 YEARS OF AGE IN SELECTED COUNTRIES AND LESSONS FOR VIET NAM

2.4.1. Improvement of the law on penalties applicable to offenders under 18 years of age in selected countries

The dissertation examines the improvement of the Law on penalties applicable to offenders under 18 years of age in the United Kingdom, the French Republic, China, and the Republic of Korea. These jurisdictions were selected because the United Kingdom represents the common-law tradition, the French Republic represents the civil-law tradition, and China and the Republic of Korea are Asian jurisdictions that share a number of legal, cultural, and socio-economic characteristics with Viet Nam. The dissertation identifies and analyses the principal achievements attained by each selected country in the process of improving its law, with reference to the substantive components of the relevant legal framework.

2.4.2. Lessons for Viet Nam

The comparative analysis yields seven lessons for Viet Nam, namely: lessons concerning the orientation of legal improvement; the factors influencing the process of legal improvement; prevailing developmental trends; the improvement of the concept and purposes of penalties; the improvement of the principles governing the imposition of penalties; the improvement of the system of penalties, including the types and severity of penalties; and the determination of penalties.

Chapter 3

HISTORICAL DEVELOPMENT AND CURRENT STATE OF THE LAW ON PENALTIES APPLICABLE TO OFFENDERS UNDER 18 YEARS OF AGE IN VIET NAM

3.1. HISTORICAL DEVELOPMENT OF THE LAW ON PENALTIES APPLICABLE TO OFFENDERS UNDER 18 YEARS OF AGE IN VIET NAM

The dissertation examines the historical development of the relevant law by dividing it into the following three periods: (i) from 1945 until the enactment of the 2015 Criminal Code; (ii) from the enactment of the 2015 Criminal Code until the enactment of the 2024 Law on Juvenile Justice; and (iii) from the enactment of the 2024 Law on Juvenile Justice to the present. This historical overview seeks to clarify the historical foundations of the current legal provisions and does not form part of the assessment of the current state of the law.

3.1.1. From 1945 to the Period Prior to the Enactment of the Criminal Code 2015

This period marked the initial formation and development of specialised principles governing the treatment of offenders under 18 years of age. Before the enactment of Viet Nam's first Criminal Code, Vietnamese law had begun to recognise the need for mitigated penalties for offenders under 18 years of age. The adoption of the Criminal Code 1985, the country's first criminal code, constituted a major turning point in the development of the Law on Penalties applicable to offenders under 18 years of age in Viet Nam. Following the enactment of the Criminal Code 1999, Vietnamese law underwent further significant reforms concerning penalties applicable to offenders under 18 years of age.

3.1.2. From the Enactment of the Criminal Code 2015 to the Period Prior to the Enactment of the Law on Juvenile Justice 2024

This period was characterised by the modernisation of the Law on penalties applicable to offenders under 18 Years of Age in line with international standards. It witnessed substantial developments in both policy and legislation relating to persons under 18 years of age in general and, more specifically, to penalties applicable to offenders under 18 years of age. These developments reflected an increasingly humanitarian approach, the modernisation of the legal framework, and Viet Nam's growing integration into the international legal order.

3.1.3. From the Enactment of the Law on Juvenile Justice 2024 to the Present

This period represents a stage of comprehensive refinement of the Law on Penalties applicable to offenders under 18 years of age. It began with the process of proposing, drafting, debating, and ultimately enacting the Law on Juvenile Justice 2024. The enactment of this legislation was driven initially by the urgent need to respond to the evolving situation of juvenile offending in Viet Nam, subsequently reinforced by the policies and directives of the Communist Party of Viet Nam and the State concerning persons under 18 years of age, and further encouraged by recommendations and support from international organisations.

The Law on Juvenile Justice 2024 has, to an initial extent, addressed a number of shortcomings in Viet Nam's legal framework governing the treatment of offenders under 18 years of age by: (i) enhancing the degree of specialisation in the criminal justice response to offenders under 18 years of age; (ii) strengthening the protection of their rights and legitimate interests; and (iii) ensuring closer conformity with Viet Nam's international obligations.

3.2. CURRENT STATE OF THE LAW ON PENALTIES APPLICABLE TO OFFENDERS UNDER 18 YEARS OF AGE IN VIET NAM

The recently enacted legal provisions governing penalties applicable to offenders under 18 years of age in Viet Nam demonstrate the current level of development of this body of law. An assessment of these provisions reveals both their strengths and remaining shortcomings, together with the underlying reasons, as discussed below.

3.2.1. Strengths of the law on penalties applicable to offenders under 18 years of age in viet nam

The assessment of the strengths of this body of law is based on a

framework comprising both substantive and formal criteria. The dissertation nevertheless adopts an integrated approach, under which the satisfaction of any evaluative criterion - whether substantive or formal—in both the formulation and practical application of the law is recognised as a specific manifestation of its strengths.

First, the Law on Penalties Applicable to Offenders under 18 Years of Age has been progressively systematised, thereby addressing the previous fragmentation and lack of coherence within the legal framework

Prior to the enactment of the Law on Juvenile Justice 2024, the legal framework governing criminal penalties applicable to offenders under 18 years of age comprised seven statutes and more than 20 subordinate legislative instruments. This resulted in fragmentation and overlap, made it difficult to identify the applicable legal norms comprehensively, and undermined consistency in their application.

The Law on Juvenile Justice 2024 has, to an initial extent, addressed these shortcomings by establishing a relatively coherent legal framework for the application of penalties to offenders under 18 years of age. In particular, it clarifies its hierarchical and functional relationship with the criminal law and criminal procedure law, while reorganising the provisions governing the principles for the application of penalties, the structure of the system of penalties, and the grounds for the judicial determination of penalties into a unified legal framework.

Overall, in this respect, the law demonstrates a relatively high level of development when assessed against the criteria of consistency and stability.

Second, the Law on penalties applicable to offenders under 18 years of age clearly reflects an approach that places education, rehabilitation, and prevention at the centre of the legal response

This approach is clearly reflected in the design of the Law on Juvenile Justice 2024, from its general principles governing the treatment of offenders under 18 years of age, to the establishment of the applicable response process, including diversionary measures and penalties and the determination of the order in which those measures are to be applied. This orientation is expressed most clearly in the statutory priority accorded to diversion before the imposition of penalties.

These provisions demonstrate that Viet Nam has begun to move away from the perception of persons under 18 years of age as “miniature adults”

and towards an approach grounded in their developmental characteristics and distinctive protection needs. In this respect, the Law on Penalties Applicable to Offenders under 18 Years of Age demonstrates a relatively high level of development when assessed against the criterion of rehabilitative orientation.

Third, the Law on penalties applicable to offenders under 18 years of age in Viet Nam demonstrates a higher degree of individualisation and systematisation than in the preceding period

The provisions governing penalties applicable to offenders under 18 years of age in the 2024 Law on Juvenile Justice are structured on the basis of multi-layered individualisation, combining criteria relating to age, the type of penalty, and the nature and degree of danger posed by the offending conduct. Accordingly, the law not only differentiates criminal liability between the two principal age group: (i) persons aged from 14 to under 16 years and (ii) persons aged from 16 to under 18 years, but also establishes distinct regimes and limits for the application of each specific penalty, ranging from warning, fine, and non-custodial reform to fixed-term imprisonment. Further differentiation is made within each age group according to the seriousness of the offence and in relation to certain special categories of offences.

In this respect, the current Law on penalties applicable to offenders under 18 Years of Age in Viet Nam partially satisfies the criteria of fairness and appropriateness, as well as clarity and accessibility.

Fourth, the Law on penalties applicable to offenders under 18 Years of Age in Viet Nam ensures the incorporation of international standards into domestic law and increasingly aligns with international trends

The provisions governing penalties in the 2024 Law on Juvenile Justice have successfully established a trend towards increasingly mitigated legal responses, consistent with the humanitarian and rehabilitative orientation of international law. In addition, the current Law on penalties applicable to offenders under 18 years of age demonstrates conformity with international standards governing juvenile justice. In this respect, the law in Viet Nam demonstrates a relatively high level of development when assessed against the criteria of appropriateness and compatibility.

3.2.2. Limitations of the Law on penalties applicable to offenders under 18 years of age in Viet Nam and their underlying causes

3.2.2.1. Limitations of the Law on penalties applicable to offenders under 18 years of age in Viet Nam

In this section, the dissertation adopts an analytical approach that distinguishes between substantive and formal criteria. This approach is intended to facilitate the accurate and systematic identification of the law's limitations and their underlying causes, thereby providing a sound scholarly basis for proposing specific and practicable measures for its improvement.

** Some Substantive Limitations*

First, the current law does not sufficiently clarify the distinctive nature of the application of penalties to offenders under 18 years of age

The absence of a clear distinction between the purposes of penalties and the conditions governing their application to offenders under 18 years of age obscures the logic of the specialised criminal policy applicable to this group. This indicates that the current law has yet to establish clearly the distinctive nature of the application of penalties to such offenders.

Second, the current law does not establish a sufficiently comprehensive and appropriately structured system of penalties applicable to offenders under 18 years of age in Viet Nam

First, the system retains a form of penalty whose practical effectiveness is limited. Given that most persons under 18 years of age in Viet Nam do not have an independent income, the imposition of a fine often results in the financial burden being borne by their families. This diminishes both the educative value of the penalty and its capacity to foster the offender's personal responsibility.

Second, the range of available penalties lacks diversity. Retaining the same four forms of penalty prescribed under the Criminal Code within the system applicable to offenders under 18 years of age contributes to the consistency and stability of the criminal law. However, from the perspective of the specialisation and individualisation of criminal liability, this approach remains subject to certain limitations, particularly the absence of flexible and rehabilitative penalties suited to the distinctive characteristics and circumstances of offenders under 18 years of age.

Third, the current law has yet to establish a genuinely specialised framework for determining the level of penalties applicable to offenders under 18 years of age

One of the shortcomings of the Law on Juvenile Justice 2024 is that it retains a method of determining the level of penalties by applying a proportional reduction to the penalty framework applicable to adult offenders. Of the four

forms of penalty currently available for offenders under 18 years of age, three non-custodial reforms, a fine, and fixed-term imprisonment permit the applicable level to be quantified, and in each case the law adopts a formula based on a proportional reduction from the level applicable to adults. This approach indicates that the law has succeeded only in making penalties more humane for offenders under 18 years of age, but has not yet ensured that they are appropriately tailored to their age-related characteristics, cognitive capacity, and developmental needs.

Fourth, the current law has yet to establish a flexible and individualised mechanism for the judicial determination of penalties applicable to offenders under 18 years of age

The Law on Penalties Applicable to Offenders under 18 Years of Age has not established a genuinely specialised framework for the judicial determination of penalties applicable to offenders under 18 years of age. A major shortcoming of the current Vietnamese legal framework is that it does not permit judges, when determining penalties, to take into account the findings of scientific assessments of an offender's psychological condition and developmental characteristics.

**** Some formal limitations***

First, the current law lacks consistency in its structural organisation

This inconsistency is reflected in the lack of alignment between the titles, substantive content, and placement of the relevant provisions, as well as in the absence of a clear distinction between provisions governing principles, the conditions for the application of penalties, the judicial determination of penalties, and the legal consequences of conviction for offenders under 18 years of age.

Second, the current law continues to contain numerous provisions that lack clarity and are therefore susceptible to differing interpretations

From the perspective of legislative drafting, the law employs open-ended concepts and subjective evaluative criteria, such as “where it is considered”, “when it is considered”, and “but not to the extent of”. Provisions framed in this manner make legal determinations substantially dependent upon the personal assessment of the persons conducting the proceedings. This may readily give rise to differences in interpretation, evaluation, and the judicial determination of penalties, thereby undermining consistency, predictability, and the assurance of a specialised approach in dealing with offenders under 18 years of age.

3.2.2.1. Causes of the limitations

**Causes arising from the organisation of law-making and law enforcement: First, there is no independent theoretical foundation for the design of penalties applicable to offenders under 18 years of age. Second, the law-making process has placed greater emphasis on refining individual legislative instruments than on designing a coherent legal system. Third, there have been delays in specifying the law's provisions and issuing guidance for their implementation following enactment. Fourth, reviews of the practical implementation of the 2024 Law on Juvenile Justice and issues relating to penalties have not become a significant component of reports submitted to the National Assembly. Fifth, international cooperation in the organisation and implementation of the law remains cautious and has yet to develop into a long-term institutional mechanism.*

**Causes arising from the conditions for ensuring implementation: First, the legal framework governing the application of penalties to offenders under 18 years of age in Viet Nam has not yet been designed as a unified and integrated system. Second, public understanding of the purposes of applying penalties to offenders under 18 years of age has yet to move beyond traditional punitive thinking. Third, the human resources responsible for implementing the Law on penalties applicable to offenders under 18 years of age remain insufficiently specialised. Fourth, mechanisms for coordination and institutional support remain inadequate and lack clarity. Fifth, a specialised database has yet to be established or effectively integrated with the national database system.*

CHAPTER 4

ORIENTATIONS AND SOLUTIONS FOR IMPROVING THE LAW ON PENALTIES APPLICABLE TO OFFENDERS UNDER 18 YEARS OF AGE IN VIET NAM

4.1. ORIENTATIONS FOR IMPROVING THE LAW ON PENALTIES APPLICABLE TO OFFENDERS UNDER 18 YEARS OF AGE IN VIET NAM

The improvement of the law on penalties applicable to offenders under 18 years of age in Viet Nam should be guided by, and consistently adhere to, the following principles: (1) Ensuring strict adherence to the policies, guidelines, and orientations of the Party at all levels, as well as the State's policy on the continued improvement of the legal system during the country's new stage of development; (2) Ensuring the comprehensive

codification of the specialized policy on the treatment of offenders under 18 years of age within the legal framework governing penalties; (3) Basing the legal reform on a vulnerable-group protection approach, thereby recognizing offenders under 18 years of age as a category requiring special legal safeguards and protection; and; (4) Drawing upon international experience in a manner consistent with Viet Nam's socio-economic, legal, and institutional conditions, while ensuring the full implementation of the country's international obligations and treaty commitments.

4.2. SOLUTIONS FOR IMPROVING THE LAW ON PENALTIES APPLICABLE TO OFFENDERS UNDER 18 YEARS OF AGE IN VIET NAM

Based on the foregoing principles for improving the law, as well as the shortcomings identified in both the legal provisions and their practical implementation, the thesis proposes the following groups of specific solutions for improving the law on penalties applicable to offenders under 18 years of age in Viet Nam

4.2.1. Group of solutions for improving the legal provisions on penalties applicable to offenders under 18 years of age in Viet Nam

With respect to substantive law, the thesis proposes the following reforms: *First*, to introduce a statutory provision defining the concept and purposes of penalties applicable to offenders under 18 years of age. *Second*, to incorporate into the principles governing the imposition of penalties an express requirement that the imposition of penalties must ensure the best interests of offenders under 18 years of age. *Third*, to redesign the system of penalties and the sentencing framework applicable to offenders under 18 years of age by: (i) progressively abolishing the application of monetary fines to offenders under 18 years of age; (ii) introducing additional educational penalties into the system of penalties applicable to offenders under 18 years of age; (iii) fundamentally reforming the methodology for determining the severity of penalties; and (iv) establishing a more flexible and individualized sentencing mechanism for offenders under 18 years of age..

With respect to legislative structure, the thesis proposes the following reforms: *First*, paragraphs 3 to 5 of Article 12 should be removed from the current article and incorporated into a separate article governing the conditions for the imposition of penalties. The provisions should also be reorganized and relocated to Part III of the Law, immediately following the

article defining the concept and purposes of penalties. *Second*, paragraphs 6 and 7 of Article 12 should likewise be relocated to other articles with titles and contents more appropriately reflecting their respective subject matters.

4.2.2. Group of solutions for improving the development and implementation of the law on penalties applicable to offenders under 18 years of age in Viet Nam

First, to promulgate interpretative guidance to ensure the uniform application of the legal provisions on penalties applicable to offenders under 18 years of age

Such guidance may take the form of a Joint Circular providing guidance on the implementation of selected provisions governing penalties and the conditions for the imposition of penalties applicable to offenders under 18 years of age. The Supreme People's Court should serve as the lead drafting authority, in coordination with the Supreme People's Procuracy, the Ministry of Public Security, and the Ministry of Justice. The Circular should define the scope of regulation by clarifying the criteria and legal grounds for assessing the statutory requirements that the application of alternative measures would “*not ensure educational and preventive effectiveness*” “*not have a deterrent and preventive effect*,” and that the case “*does not yet warrant exemption from penalties*”; providing guidance on the procedures and methods for assessing and establishing these conditions; and prescribing the reasoning requirements that courts must satisfy in their judgments and decisions when applying such statutory conditions.

Second, to establish a reporting mechanism on the development and implementation of the law on penalties applicable to offenders under 18 years of age

To achieve this objective, reporting on the development and implementation of the law on penalties applicable to offenders under 18 years of age should be proposed as an annual performance indicator and statutory responsibility of the Government, the Supreme People's Procuracy, and the Supreme People's Court in the process of reviewing and formulating a new Resolution to replace Resolution No. 96/2019/QH14 of the National Assembly dated 27 November 2019 on crime prevention and control, the prevention of violations of law, the work of the People's Procuracy, the People's Courts, and the enforcement of judgments. The new

Resolution is expected to be submitted to the National Assembly for consideration, comments, and adoption at the second session of the 16th National Assembly in October 2026.

Third, to strengthen international cooperation in the implementation of the law on penalties applicable to offenders under 18 years of age in Viet Nam

International cooperation should not be confined to the development of legislation but should be expanded to encompass the implementation of the law on penalties applicable to offenders under 18 years of age. Greater efforts should be made to learn from international experience through the engagement of international experts and organizations to provide technical assistance during the implementation process, particularly in the application of assessment tools for evaluating offenders' prospects for rehabilitation and the impact of penalties on offenders in the sentencing process. Such cooperation should be further strengthened and systematically promoted throughout the court system in Viet Nam in the years ahead.

Fourth, to make substantial investments in interdisciplinary research on offenders under 18 years of age in Viet Nam

Together with in-depth research on penalties, these interdisciplinary studies will help establish that offenders under 18 years of age have not yet attained full cognitive and behavioural maturity, are more susceptible to the influence of their family and social environments, and possess a greater capacity for rehabilitation than adult offenders.

Fifth, to strengthen the role of the State in the protection and development of children in Viet Nam

A clear and consistent recognition of the responsibility to protect, care for, and educate children should be established as a central objective of social policy, requiring the law not only to address unlawful conduct but also to contribute to safeguarding the healthy long-term development of children.

4.2.3. Group of solutions for improving the conditions necessary for the improvement of the law on penalties applicable to offenders under 18 years of age in Viet Nam

With respect to political conditions, efforts should be made to promote a fundamental shift in perception from a punitive approach to one centred on protection and reintegration throughout the development and implementation of the law. Greater emphasis should also be placed on the accountability of heads of competent authorities by linking such responsibility to performance evaluation mechanisms, under which compliance with the principles governing the treatment of offenders under 18 years of age should constitute a mandatory criterion for assessing the effectiveness of public service performance. *With respect to legal conditions*, supporting legal provisions should be strengthened and developed in a coherent and coordinated manner, particularly those relating to access to information, legal aid, and the dissemination and legal education of the public.. At the same time, a clear legislative roadmap should be developed to ensure consistency with the provisions of the Criminal Code, the Law on Handling of Administrative Violations, and the Law on Children. *With respect to socio-cultural conditions*, greater efforts should be devoted to public awareness, legal dissemination and education programmes, as well as education on adolescent psychology and the causes and contributing factors of offending by offenders under 18 years of age. These initiatives should be further strengthened through the active involvement of socio-political organizations, including the Ho Chi Minh Communist Youth Union, the Viet Nam Women's Union, and educational institutions throughout the country. *With respect to resource conditions*, investigators, prosecutors, judges, lawyers, and legal aid providers should be further specialized through advanced training programmes and professional specialization based on designated positions, including the establishment of dedicated personnel. Particular attention should also be given to the development of the social work profession in Viet Nam, as social workers are expected to play an increasingly important role in supporting authorities and other participants involved in criminal proceedings concerning offenders under 18 years of age.

CONCLUSION

The thesis entitled “*Improvement of the Law on Penalties Applicable to Offenders under 18 Years of Age in Viet Nam*” has examined this research topic comprehensively and has achieved significant theoretical and practical contributions, as summarized below:

First, the thesis provides a comprehensive review of relevant domestic and international studies and concludes that no previous research has systematically examined the theoretical foundations of the improvement of the law on penalties applicable to offenders under 18 years of age, assessed the practical issues relating to such improvement, or proposed principles and solutions to ensure the improvement of the law in this area. On that basis, the thesis identifies the research issues requiring further examination and establishes the scope and direction of its subsequent analysis.

Second, the thesis develops the theoretical framework for the improvement of the law on penalties applicable to offenders under 18 years of age by establishing the concept, characteristics, and role of such legal improvement; identifying its substantive content and the criteria for assessing the degree of legal improvement; and clarifying the conditions necessary to ensure the effective improvement of the law in this field.

Third, the thesis provides a systematic overview of the historical development of the law on penalties applicable to offenders under 18 years of age by dividing its evolution into three distinct periods. Based on the established evaluation criteria, the thesis assesses the degree of improvement of the law in this field, highlighting its principal strengths, identifying the remaining shortcomings, and analysing the underlying causes of those shortcomings.

Fourth, having established the guiding principles for the improvement of the law on penalties applicable to offenders under 18 years of age in Viet Nam, the thesis proposes three groups of

solutions comprising eighteen specific measures. *With respect to the group of solutions for improving the legal provisions*, the thesis proposes 04 substantive reforms relating to the concept and purposes of penalties, the principles governing the imposition of penalties, the system of penalties, and sentencing, together with one legislative drafting reform consisting of the restructuring of Article 12 of the Law on Juvenile Justice. *With respect to the group of solutions for improving the development and implementation of the law*, the thesis proposes 10 specific solutions. Finally, *with respect to the group of solutions for improving the conditions necessary for the improvement of the law*, the thesis proposes 03 specific solutions.

LIST OF THE AUTHOR'S PUBLICATIONS RELATED TO THE THESIS

1. Tran Ha Thu, Tang Thi Thu Trang (2025), “Provisions on the Criminal Capacity of Juveniles under the Juvenile Criminal Justice Code of the French Republic,” *Procuracy Journal*, No. 06/2025, pp. 56–62.
2. Tran Ha Thu (2024), “Penalties Applicable to Juvenile Offenders: The Development of the Law and Current Legal Framework in the French Republic,” *Journal of Law and Development*, No. 9/2024, pp. 45–60.
3. Tran Ha Thu, Lee Huyng Yeon (2024), “The Law of the Republic of Korea on Penalties Applicable to Juvenile Offenders and Implications for Viet Nam,” *Legislative Studies Journal*, No. 14 (493), pp. 46–54.