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## Values of protecting human rights in criminal procedural code of le dynasty in Vietnam

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### **Abstract**

Vietnam has possessed a distinct and exceptional Criminal Procedure Code known as the Criminal Procedure Code of the Le Dynasty since the latter part of the 18th century. While the Le Dynasty drew inspiration from Chinese law, they did not simply copy it. Instead, they created their own Criminal Procedure Code alongside the Criminal Code. Containing a total of 31 articles, this Code provides a comprehensive set of guidelines and protocols for addressing a wide range of cases, including murder, robbery, theft, gambling, and even crimes involving the mistreatment of innocent individuals. This approach, when placed in the historical context of that time, is truly unique. This Code is widely regarded as one of the earliest Criminal Procedure Codes in Eastern countries. The author of this article will examine the content and significance of this Code to highlight the importance of safeguarding human rights and legitimate interests. These values, as per the author's perspective, can be further upheld and advanced in the present circumstances.

**Keywords:** Criminal procedural code, criminal code, le dynasty, protection of human rights, Vietnam

### **1. Introduction**

One noteworthy aspect of the Le Dynasty law (1428 - 1788), as well as Vietnamese medieval law in general, is the presence of a distinct procedural code known as the Criminal Procedural Code (CPC) of Le Dynasty (Vietnamese: Quoc Trieu Kham Tung Dieu Le) <sup>[1]</sup>. Unlike the common practice in the Middle Ages, where general laws encompassed various legal areas, the existence of this Code as a separate and independent code specifically for litigation highlights its unique nature. The content of this Code reveals the spirit of serving the people, respecting and protecting the rights and legitimate interests of people. Most of the regulations in the practices consistently express that spirit. Every step involved in the legal process, starting from filing lawsuits, making denunciations, investigating crime scenes, conducting trials, executing judgments, and even the statutes of limitations for lawsuits, is carefully designed to prevent misconduct by officials and safeguard the lawful rights of individuals.

Historical records and other sources indicate that King Le Hien Tong promulgated this Code in 1777 <sup>[2]</sup>. The purpose of this Code was to prevent arbitrary and unfair application of the law, protect the legitimate rights of the people, and "give the people a place to rely on" by clearly defining the responsibilities of officials taking part in the litigation process. The preamble of this Code clearly stated: "[...] use the power to be fair in terms of reason in litigation, so that people have a place to rely on, worthy of their responsibilities." <sup>[3]</sup>. This Code contains regulations on litigation, specifically there are 31 litigation regulations. These regulations show the protection of legitimate human rights in the litigation process.

### **2. Materials and methods**

#### **2.1 Materials**

Until now, there are only one document that introduce the translation of the Criminal Procedural Code of Le dynasty in Vietnam. It is the book Some Vietnamese legal documents, from 15<sup>th</sup> to 18<sup>th</sup> centuries of Institute of State and Law published by Social

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<sup>1</sup> Institute of State and Law, Some Vietnamese legal documents, from 15<sup>th</sup> to 18<sup>th</sup> centuries, Social Sciences Publishing House, Hanoi, 1994, p. 262.

<sup>2</sup>Institute of State and Law, Op.cit., p. 263.

<sup>3</sup>Institute of State and Law, Op.cit., p. 269.

Sciences Publishing House in 1994. There is no research works on Criminal Procedural Code of Le dynasty in Vietnam. The Textbook “Vietnamese history of state and law“ written by Nguyen Minh Tuan, Pham Thi Duyen Thao and Mai Van Thang (2017) introduced basically about this Code <sup>[4]</sup>. As a result, this article will fill the gap by conducting the values of this Code in protecting human rights and legitimate interests.

## 2.2 Methods

The author used a combination of traditional research methods from the social sciences and legal sciences to conduct the research on this Code. The methods mentioned here encompass dialectical and historical materialism, as well as the analysis and synthesis method.

- **Dialectical and historical materialism methods:** This method is used to clarify basic theoretical and practical issues on the research topic.
- **Analysis and synthesis method:** The article relies on the collection and analysis of available documents related to this Code.

## 3. Results and Discussions

Along with this code, the Le dynasty has applied the Penal Code, called Hong Duc Code from the fifteenth century. However, the Hong Duc Code only regulates types of crimes, not the order and procedures of trial. As I stated above, this Code includes 31 litigation regulations. This Code clearly stipulates the procedures and methods for resolving criminal cases. These regulations show the protection of legitimate human rights in the litigation process as follows:

### 3.1 The order and procedures of litigation of this Code promote humanity and protect human interests

The Code has many provisions that show profound humanity, paying attention to the human aspect and human interests right in the laws themselves. The debt litigation rule states that if a family has a funeral but has not yet buried the deceased, and they owe a debt, the creditor should show compassion. They should not arrest or schedule a time to question them that would disrupt the funeral. Instead, they should wait until after the burial before asking questions <sup>[5]</sup>.

The Code also reflects the humanity in the regulations concerning the responsibility of officials to handle unusual situations that occur in the community with compassion. For instance, if someone in a town passes away due to illness or gets injured during the night with no knowledge of the perpetrator, or if the body is discovered elsewhere and brought back during the night with traces found in the local area. In such cases, it is crucial for the district official to present the evidence to avoid false accusations. If no one comes to claim the body for 5 or 6 days, [the commune official] must proceed with the burial <sup>[6]</sup>.

As a general rule, the Code also mandates that complaints should not be escalated beyond authority level <sup>[7]</sup>. However,

in particularly urgent cases, where there is serious injustice and loss, and people do not know who to complain to, they can «cry out for justice» at any level: "In all cases of being oppressed by a powerful person and suffering serious loss, and in cases of injustice and not knowing which office to go to [...], people can ring bells to cry out for justice" <sup>[8]</sup>.

### 3.2 Strict procedural process, respecting the objective truth of the case and handling the case quickly and promptly

The initial litigation governs general principles that apply to all cases, followed by specific rules such as those for human life litigation, robbery litigation, land litigation, fighting litigation, marriage litigation, and bullying litigation. These legislative techniques not only highlight the overall challenges in the litigation process but also shed light on the unique features of each case type.

The truth of a case holds significant importance. Real things must be targeted. To avoid inaccurate accusations, the Code stipulates meticulously about evidence and witnesses because this is an important basis, the basis for future trials: "The family members can request a notice if there is a case of murder, revenge, lust, fighting, robbery, or theft in the locality and a corpse is present [...]" <sup>[9]</sup>; "The village chief must swiftly compile a record, either by relying on the incident witnessed or getting signatures from witnesses as evidence. This record should be free from any fear of evasion, favoritism, or animosity." <sup>[10]</sup>; "Punishment by cane awaits those who make false accusations or irrelevant lawsuits" <sup>[11]</sup>.

Evidence and crime scenes must be strictly protected: "Those reporting gambling should only do so when at the gambling scene, with all evidence, and authorities can only arrest them once captured. Unless there is a valid reason and evidence, any arbitrary report is a false accusation" <sup>[12]</sup>.

It is crucial to be both cautious and prompt when dealing with each case. This not only guarantees the fairness of the situation and protects the victim's rights, but it also resolves conflicts and prevents any further intentions of revenge. The Code clearly states, "In order to prevent unnecessary prolongation of the day, it is imperative to not engage in indiscriminate arrests of suspects" <sup>[13]</sup>; "They must verify the record first before proceeding with the arrest and search. If there is no existing record and the incident is long past, it cannot be considered for examination" <sup>[14]</sup>.

### 3.3 Strongly penalize the officials who harass the innocent individuals and encourage ethical and accountable conduct

This Code has its own regulations on the responsibilities of officials and strict punishment for cases of bullying the people, which are the rules on suing for bullying. It stipulates the prevention of acts of bullying innocent individuals: "[...] If anyone reports being bullied, they may state the name of the noble. The court must compel the nobles or their relatives to appear for questioning in order to

<sup>4</sup> Nguyen Minh Tuan, Pham Thi Duyen Thao, Mai Van Thang (2017), Textbook of Vietnamese History of State and Law, Publishing House of Vietnam National University, Hanoi.

<sup>5</sup> Institute of State and Law, op. cit., p. 323.

<sup>6</sup> Institute of State and Law, op. cit., p. 305.

<sup>7</sup> Institute of State and Law, op. cit., pp. 270, 275.

<sup>8</sup> Institute of State and Law, op. cit., p. 278.

<sup>9</sup> Institute of State and Law, op. cit., p. 297.

<sup>10</sup> Institute of State and Law, op. cit., p. 320.

<sup>11</sup> Institute of State and Law, op. cit., p. 327.

<sup>12</sup> Institute of State and Law, op. cit., p. 325.

<sup>13</sup> Institute of State and Law, op. cit., p. 308.

<sup>14</sup> Institute of State and Law, op. cit., p. 319.

confirm the truth <sup>[15]</sup>. In addition, the Code also stipulates strict punishment for officials who commit illegal acts: "Evil tyrants, together with those with previous convictions, secretly commit bad things will all face arrest and receive punishment under the law <sup>[16]</sup>."

Interrogation is a very important stage, which has a decisive meaning in determining the objective truth of the case. Therefore, the legislators of this time have considered the acts of bullying during interrogation to convict and castigate the investigators who commit such acts. In the marriage litigation, it is also clearly stipulated: "If the investigating officer makes a false accusation, investigates falsely, convicts carelessly and stops to deny the case, or bullies the accused into making an unreasonable conviction, then the accused may file a petition to the investigating officer to investigate the truth next time, and convict with a heavy penalty" <sup>[17]</sup>.

During the proceedings, the legislator paid attention to preventing corrupt behavior, profiteering by the inspectors for their own benefit: "The aristocratic families who bully others and then give the inspectors some money to escape punishments are judged by the penalty of deportation" <sup>[18]</sup>.

### 3.4 Protecting witnesses and brave individuals, fighting against evil, and punishing those who conceal crimes

Emphasizing the involvement of individuals in combating crime is of utmost importance. The Criminal Code of Le dynasty also has many provisions to protect those who bravely fight against crime. Specifically: "Individuals who accurately capture or report the truth will receive an official position for severe offenses, while those involved in less severe crimes will be rewarded with monetary compensation or relieved of official responsibilities. In the unfortunate event of their death, the relatives must inform the local authorities in order to be eligible for financial help for burial and commendation certificates" <sup>[19]</sup>.

Connivance and concealment of crimes will also be severely punished, regardless of who they are: "The authorities will punish anyone, even the relatives of the king who conceal the hiding crimes with deportation" <sup>[20]</sup>.

### 3.5 Punishment for false accusations

Lawmakers of this period paid great attention to punishing acts of slander: "Any act of making false accusations to create lawsuits or taking matters that are not relating to oneself and collecting trivial matters to accuse so that others are implicated in the case is punished by being whipped. [...] The censor who discovered and caught them also examined the crime and reported to warn against dishonest behavior and keep the people's livelihood peaceful" <sup>[21]</sup>; "[...] Those who falsely accuse others often display an arrogant attitude as they demand money. In case their demands are not met, they resort to filing complaints, which the officials may choose not to acknowledge. Punishment awaits those offices that are lenient, disregard careful consideration, and accept false accusations from accusers" <sup>[22]</sup>.

<sup>15</sup>Institute of State and Law, op. cit., pp. 312-313.

<sup>16</sup>Institute of State and Law, op. cit., p. 308.

<sup>17</sup>Institute of State and Law, op. cit., p. 322.

<sup>18</sup>Institute of State and Law, op. cit., p. 313.

<sup>19</sup>Institute of State and Law, op. cit., p. 308.

<sup>20</sup>Institute of State and Law, op. cit., p. 309.

<sup>21</sup>Institute of State and Law, op. cit., pp. 327-328.

<sup>22</sup>Institute of State and Law, op. cit., p. 328.

### 3.6 Distinguish the nature and level of danger of the crimes and clarify the motive for the crime

The responsibility of the judge is to correctly cite the rules and correctly assess the nature and level of danger of the act in order to convict: "When examining and deciding on litigation cases, all offices should cite the law as the official method" <sup>[23]</sup>.

The basis for accurate assessment is to attribute crimes objectively, not emotionally, and must be based on the violation and the level of fault: "Do not use intention to add or subtract, use affection to lead [...] All criminals, although the crime is the same, but the intention to commit the crime is different, so we must distinguish between the severity and lightness to add or subtract" <sup>[24]</sup>. Specifically in the practices, lawmakers have set forth the requirement to identify the motive for the crime: "killing out of hatred, killing out of lust, killing out of fighting, killing out of robbery, killing out of theft", to distinguish it from other cases such as "dying from illness, dying from hunger" <sup>[25]</sup>. The above provision is also aimed at clarifying the subjective elements of the crime.

### 3.7 Regulate the statutes of limitations for lawsuits

Corresponding to each litigation, the legislator clearly stipulates the statutes of limitation for lawsuits. This regulation is clearly a criterion not only to evaluate the legislative technique and the high level of detail of the Code, but also to protect the legitimate rights of people in preventing officials from extending the time limit for personal gain.

For each type of crime, serious or minor, the time limit also has different regulations. For example, the time limit for litigation on human life stipulates:

In cases involving human life, as per the traditional rule, there is a 4-month time limit starting from when the plaintiff files a complaint, and within 2 months, the defendant can present their case. From the time the defendant presents the case to judgment, the time limit is 4 months. If the defendant does not present the case after 2 months, it is considered hiding. Regarding appeals, it is permissible to present a defense within four months from the judgment date to the appeal date <sup>[26]</sup>.

### 3.8 Create the independence of the subjects taking part in the proceedings

All work related to arresting, taking statements, making records, examining, and judging were foreseen by the legislators to minimize the level of violations, abuse of state power for personal gain or to carry out personal intentions. In all cases, judges are not allowed to receive private requests: "The examining officer cannot ask questions, must have an order from the officer, and cannot receive private requests"; "It is necessary to pay attention to the thoughtfulness of questioning, and must be reasonable so that the official work is clear and accurate" <sup>[27]</sup>.

Respecting the reasoning and arguments of the judge also showed a progressive awareness of the proceedings of the legal life of this period. In principle, a complete judgment

<sup>23</sup>Institute of State and Law, op. cit., p. 279.

<sup>24</sup>Institute of State and Law, op. cit., p. 230.

<sup>25</sup>Institute of State and Law, op. cit., p. 297.

<sup>26</sup>Institute of State and Law, op. cit., p. 303.

<sup>27</sup>Institute of State and Law, op. cit., p. 278.

must have tight contents including backgrounds, reasoning, arguments and judgment. The trial must also publicly announce the judgment so that all parties and the people know - "wrong judgments so that all parties know".

### 3.9 Decentralize trials based on the nature of the case

Not only distinguishing which case is at Central, Provincial or District levels, the legislator also clearly distinguishes which level handles each type of litigation (litigation about human life, robbery, land, bullying, fighting, insults, etc.). For example, the Code stipulates: "Matters related to public and private land, property, marriage, fighting, insults, debts, rent, gifts, graves, etc., all matters that are not miscellaneous litigation, must be reported to the district level and then appealed to the provincial level. If the case is not yet resolved, then appeal to the central one." [28]; «if two communes have a big fight or someone has a dispute with the whole commune, they can ask the commune chiefs for resolutions [29].

### 3.10 Encourage to solve the conflicts of non-serious cases through conciliation

Handling of intentional injury (fighting lawsuit) in this Code for cases of minor injuries: "If the injury is minor, individuals should have a conciliation" [30].

In serious cases, for example, lawsuits about human life or adultery, in principle, it is not allowed to reconcile with each other, specifically: "Litigation about human life is a criminal offense. According to the law, the investigating officer is not allowed to grant a reconciliation" [31]; "Fornicators with solid evidence must be examined and punished, not granted a reconciliation" [32].

### 3.11 Limitations and comparison

In addition to the above advances, this Code has not yet overcome the limitations of the time, which is the lack of a clear distinction between the executive and the judiciary. In other words, the judiciary at this time was not yet an independent branch. For example, the village chief often tried lawsuits in the village. This was an official position that performed both administrative and judicial duties.

However, if we compare the same time of this Code with the procedural law in Western Europe, we can see that this Code is more progressive in many aspects. In the feudal period in Western Europe, when trying a trial, if there is no legal evidence, people would apply the principle of ordeals. The form of trial was very diverse, including forms such as trial by boiling water (Ordeal of hot water), trial by drowning in the river (Ordeal of cold water), trial by fire (Ordeal of fire) [33]. Right or wrong, guilt or innocence depended on the gods, not on objective procedures with quite strict requirements, as in this Code. This further shows the value of this Code, when placed in procedural law in the world at the same time. Author Vu Van Mau said: "This is the first time in the history of law in Vietnam and perhaps the whole East that there is a separate procedural code. And

it is also an honor for the legislators of the Le Dynasty to clearly distinguish between substantive laws and procedural laws" [34].

## 4. Conclusion

Overcoming historical limitations, it can be seen that this Code still contains many values that are worth referring to and inheriting in protecting the legitimate rights of people. Protecting human rights in litigation is not simply about recognizing the legitimate rights of people, but more importantly, it is necessary to clearly define the responsibility of state agencies and competent persons in determining the truth of the case in an objective, comprehensive manner, clarifying the evidence and details of the case. In cases where there is inadequate evidence or the crime cannot be proven, it becomes necessary to assume innocence on behalf of the accused.

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<sup>28</sup>Institute of State and Law, op. cit., pp. 270-271.

<sup>29</sup>Institute of State and Law, op. cit., p. 319.

<sup>30</sup>Institute of State and Law, op. cit., p. 319.

<sup>31</sup>Institute of State and Law, op. cit., p. 306.

<sup>32</sup>Institute of State and Law, op. cit., p. 322.

<sup>33</sup>University of Pennsylvania, Ordeals, University of Pennsylvania Press, 1898, Vol 4, pp. 7-9

<sup>34</sup>Vu Van Mau, Civil Law Brief Lecture (Volume 1), Saigon, 1967, p. 143.