

Medicine Smuggling in Vietnam: Challenges, Impacts, and Policy Recommendations

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ABSTRACT

Medicine smuggling poses significant challenges to Vietnam's economic stability, public health, and legal systems. This crime, committed by individuals and commercial entities, undermines pharmaceutical markets and exposes the general public to substandard and potentially dangerous medicines. This paper provides a comprehensive analysis of medicine smuggling in Vietnam, beginning with a conceptual overview, including its definition, key characteristics, and constituent elements. It examines the current state of medicine smuggling, highlighting criminal penalties and enforcement mechanisms under Vietnamese law. Through discussing specific criminal cases, the paper illustrates the apparent discrepancies between legal provisions and their practical enforcement, emphasizing gaps that complicate the effectiveness of combating this crime. An analysis of the root causes, ranging from economic incentives and regulatory weaknesses to cross-border trade complexities, further underscores the systemic issues that fuel smuggling activities. The study concludes with actionable policy recommendations to strengthen legal frameworks, enhance interagency collaboration, improve border control mechanisms, and raise public awareness. These measures are proposed as critical steps toward mitigating the impacts of medicine smuggling on Vietnam's economy, healthcare system, and overall societal well-being.

1. Background

Historical and socio-economic factors have shaped the evolution of medicine smuggling in Vietnam. From a historical perspective, the unregulated cross-border exchange of pharmaceutical products has inspired smuggling activities along colonial trade routes and local medicinal practices. An escalation of the same in the 21st century has been accelerated by the gaps in the regulatory enforcement in an environment of an increasing demand for affordable medical products. Smuggling is currently characterized by the selling of counterfeit and unlicensed pharmaceutical products, which poses significant risks not only to public health but also to the Vietnamese economy.

While smuggling in the past tended to be complex, technological and infrastructural developments have facilitated and encouraged the vice. Studies have revealed that the liberalization of trade and improved infrastructural developments, especially within porous borders with neighboring countries like Cambodia, Laos and China, has played a significant role in encouraging the smuggling of counterfeit pharmaceutical products¹. Interestingly, while those committing this crime of smuggling are well advanced with technology, it has been reported that enforcement agencies continue to grapple with corruption and limited resources². A separate study has revealed that the major drivers of smuggling in Vietnam, especially through the porous borders, entail high domestic demand, inadequate legal controls, and disparities in pharmaceutical prices between Vietnam and her neighboring countries. Additionally, the current trends show that social media platforms, which are technical to regulate play a bigger role in the distribution of counterfeit and, or unlicensed pharmaceutical products. As a result, the enforcement authorities continue to face bottlenecks, especially in trying to balance affordability and access to quality and licensed pharmaceutical products³.

¹ Hai Thanh Luong, "Transnational Narcotics Trafficking and Law Enforcement: A Vietnam Perspective" (2017).

² Philippe Le Failler, "Drug Prohibition in Vietnam," in Living with Drugs, 87-107 (ISTE, 2020).

³ Qingfei Yin, "The Mountain Is High, and the Emperor Is Far Away: States and Smuggling Networks at the Sino-Vietnamese Border," Asian Perspective 42, no. 4 (2018): 551-73.

Currently, medicine smuggling in Vietnam has become increasingly intricate, facilitated by diverse channels such as large pharmacy chains, retail drug stores, and online networks. While these outlets provide accessibility, individuals motivated by profit illegally import pharmaceuticals to evade costs associated with lawful trade. This practice undermines state revenues through lost import taxes and fees, creating a competitive disadvantage for legally imported medicines due to their higher retail prices. A critical concern is the unchecked quality of smuggled pharmaceuticals, with many products failing to meet safety standards and posing significant health risks⁴. The issue persists despite criminal law provisions addressing smuggling through fines, non-custodial reforms, imprisonment, and supplementary penalties. The question arises: Why has smuggling not been combated, and what legal reforms and enforcement measures can effectively deter it?

2. Research Methods

Methods to provide a comprehensive framework for evaluating the legal, social, and practical dimensions of medicine smuggling in Vietnam were employed to develop informed recommendations for policy and enforcement improvements. A combination of qualitative and quantitative legal analysis, data synthesis and evaluation of empirical observations, and comparative research methods were used to analyze the legal framework and practical implications of smuggling provisions, particularly in the context of smuggling pharmaceutical products in Vietnam. For the legal analysis, a systematic examination of written laws, including the 1999 Criminal Code and the 2015 Criminal Code (amended in 2017), was conducted to interpret their provisions on smuggling. This approach provided a foundational understanding of the legal framework and identified areas requiring reform or improved enforcement.

Relevant data from online media sources, case studies, and secondary sources were equally collected, synthesized, and evaluated. This method allowed for the formulation of observations and the assessment of the practical application of smuggling-related laws.

Direct observations of real-world practices and data were used to contextualize the challenges of enforcing anti-smuggling regulations. These observations informed personalized recommendations to enhance legal effectiveness.

Finally, the historical method was applied to compare the evolution of smuggling-related provisions between the 1999 and 2015 Criminal Codes. This analysis highlighted the legal progression and its implications for addressing contemporary smuggling challenges, particularly in the pharmaceutical sector.

3. Concept of Smuggling

The concept of smuggling, especially from the legal perspective, is anchored first on proper definition to enhance clarity. Overall, smuggling has been related to the illegal transportation, distribution, or trade of drugs, medicine, and pharmaceutical products across borders, which could be administrative or international, and bypass regulatory checks. According to the 2015 Criminal Code amended and supplemented in 2017, smuggling is the illegal cross-border trading between tax-free zones and domestic territory (or vice versa) of goods, Vietnamese currency, foreign currency, precious metals, and gemstones⁵. From a criminal law perspective, smuggling primarily involves cross-border trading or trading between tax-free zones and domestic territory (or vice versa) of goods, Vietnamese currency, foreign currency, precious metals, and gemstones conducted illegally⁶.

Being one of the defined criminal acts, the Vietnamese criminal act provides a distinct statement structure to break down the complex dynamics of smuggling as a crime. The legal elements provided

⁴ H. T. Luong, "How We Understand Fully the Supply, Demand, and Harm Reduction in Drugs Policy in Vietnam?" *Harm Reduction Journal* 21, no. 1 (2024): 204.

⁵ Vietnam, *Criminal Code of 2015, Amended and Supplemented in 2017*, Law No. 100/2015/QH13 (Hanoi: National Assembly of Vietnam, 2017).

⁶ Vietnam, *Criminal Code of 2015, Amended and Supplemented in 2017* (Article 251).

for in the definition form a basis of proof that a smuggling offense has happened whenever it is reported. Smuggling has four legal elements, which include object, subject, objective aspect, and subjective aspect. The four elements play an important role for parties to understand and prosecute smuggling offenses in Vietnam.

The object of smuggling entails the specific goods or items involved in the smuggling activity. For this paper, the focus is on drugs, medicine, or pharmaceutical products. Therefore, for the object to be confirmed, it ought to be illegal drugs, pharmaceutical products, or controlled substances such as medicines being transported without authorization or the needed licensing. Furthermore, it is essential to note that the object ought to be clearly defined within the legal framework of either the country's origin or destination party since different objects could have different penalties or legal implications.

The subject of smuggling could be any individual or entity with full capacity for civil acts, including commercial legal entities. For the case of individuals, it is provided that the subject ought to be 16 years old and older with mental capacity and not exempted from criminal liability as provisioned in diplomatic immunity. The subject may include any accomplices or co-conspirators tied or associated with the transaction of smuggling drugs, medicines, or pharmaceutical products.

The "objective aspect" entails the external factors surrounding the smuggling act. These factors could be the means of transport for the smuggled goods and physical evidence of the smuggling operations. This manifests in illegal cross-border trading between tax-free zones and domestic territory (or vice versa) of goods, local Vietnamese currency, foreign currency, precious metals, and gemstones. The objective aspect plays a critical role in establishing the factual basis of the crime since it shows how the smuggling operation occurred and the instruments used by the offenders. The "illegal" nature of smuggling is understood as Buying or selling without permits or contrary to import-export permit contents and other state customs regulations and or conducting import-export business with valid permits but declaring incorrect quantities, making fraudulent declarations, forging documents, concealing goods or money, or circumventing checkpoints to evade authority control. The crime is considered complete from the moment goods or money illegally cross the border into Vietnam.

Regarding the value threshold for criminal prosecution, for goods, Vietnamese currency, foreign currency, precious metals, and gemstones, the value must be 100,000,000 VND (one hundred million dong) or more. For cases below 100,000,000 VND, they must have previously received administrative penalties for smuggling or related offenses: Illegal cross-border transportation of goods and currencies; Manufacturing, storing, transporting, and trading in prohibited goods; Manufacturing and trading in counterfeit goods; Manufacturing and trading in counterfeit food products, foodstuffs, curative medicines, preventive medicines; Manufacturing and trading in counterfeit animal feed, fertilizers, veterinary medicines, plant protection products, and plant varieties; Illegal business operations; Profiteering; Tax evasion or having been previously convicted of any of the following crimes: Illegal cross-border transportation of goods and currencies; Manufacturing, storing, transporting, and trading in prohibited goods; Manufacturing and trading in counterfeit goods; Manufacturing and trading in counterfeit food products, foodstuffs, curative medicines, and preventive medicines; Profiteering; Tax evasion.

Additionally, the criminal code has specific provisions for factors that could lead to harsher penalties for smuggling offenses. For example, aggravating circumstances that would lead to an increase in penalties entail organized organized crimes or syndicates, the use of minors to undertake a smuggling operation, and smuggling operations with objects that have been considered dangerous⁷.

The "subjective aspect" looks at both the mental state and the intent of the individual accused or found guilty of smuggling drugs, medicine, or pharmaceutical products at a particular time. The perpetrator committing this crime has to demonstrate knowledge and the intention behind their actions. For instance, whether it was with direct intent, they knew smuggling was dangerous to society but

⁷ Vietnam, *Criminal Code of 2015, Amended and Supplemented in 2017* (Article 250).

deliberately proceeded and desired the consequences. Therefore, for a successful smuggling charge in the legal arena, it must be demonstrated that the subject committed the crime of smuggling knowingly and had intended to bypass the set legal restrictions. This element in the definition of smuggling as a crime is crucial in differentiating between framed or accidental violations and deliberate criminal acts. A good case example would be if an individual unknowingly carried smuggled drugs, medicines, or pharmaceutical products without the awareness of their illegal standing. They may not meet the subjective criteria for criminal liability.

Overall, it is worth noting that understanding smuggling from the lens of the 2015 Criminal Code, amended and supplemented in 2017, requires a comprehensive analysis of the four elements in the context of Vietnam. The four elements should be developed to build a strong legal case against the accused. The observed interlinkages amongst the four elements, the object, subject, object aspect, and subject aspect, aid the law enforcers and the legal professionals in Vietnam to classify the nature of the crime, the extent of violations, and the appropriate legal consequences. This paper underscores that such a legal framework provides a good basis for ensuring that justice is served and protecting the rights of individuals within the legal system in Vietnam.

Additionally, it is worth noting that the Vietnamese 2015 Criminal Code, amended and supplemented in 2017, has made clear provisions on the penalties regarding the crime of smuggling drugs, medicine, or pharmaceutical products. The law states that offenders, both individuals and or corporate entities, may be subjected to lengthy prison sentences depending on the offense's magnitude and the type of object in question. Furthermore, significant financial penalties could be administered during the imprisonment phase. Nevertheless, the criminal code has equally outlined preventive provisions that seek to ensure that drug smuggling cases are handled and addressed in time without having to get to lengthy court processes. For instance, the law encourages collaboration with multilateral agencies and international enforcement agencies to address the crime of smuggling and trafficking of drugs, medicines, or pharmaceutical products.⁸ Such a provision not only paves the way for collaboration between states involved in a smuggling case but also indicates that Vietnam as a country aligns with both regional and international legal standards and safeguards when it comes to combating drug smuggling and trafficking. Additionally, the law supports initiatives geared towards fostering public sensitization on the hazards of drug abuse and the legal consequences of drug smuggling and trafficking⁹.

An important note regarding smuggled goods' value between individual and commercial legal entity subjects: there is a difference in the value threshold for first-time offenses. Specifically, criminal liability applies to smuggled goods valued from 100,000,000 VND (one hundred million Vietnamese dong) for individuals and 200,000,000 VND (two hundred million Vietnamese dong) for commercial legal entities. Thus, the property valuation threshold in smuggling offenses is lower for individuals than for commercial legal entities¹⁰.

4. Current Situation of Medicine Smuggling

This section uses the word medicine smuggling to mean any form of smuggling involving medical products, drugs, or pharmaceutical products as objects. In the context of Vietnam, the current state of medicine smuggling could be described as highly complex, concerning, large in scale, and sophisticated in methods.

According to the Ministry of Public Security Office, in 2021, national police forces detected 357 cases involving 473 suspects in smuggling operations, estimated damages of 15,07 billion VND, leading to criminal prosecution of 55 cases with 206 defendants. In a notable case, the Police Department for Corruption, Economic Crime, and Smuggling Investigation dismantled a network illegally trading

⁸ Vietnam, *Criminal Code of 2015, Amended and Supplemented in 2017* (Article 2).

⁹ Vietnam, *Criminal Code*, Article 2.

¹⁰ Vietnam, *Criminal Code of 2015, Amended and Supplemented in 2017* (Article 188).

10,000 boxes of Lien Hoa Thanh On medicine in Ho Chi Minh City. The exact online newspaper by the Communist Party of Vietnam revealed that the COVID-19 pandemic played a key role as far as the aggravated drug smuggling cases are concerned. According to the article, there was an increase in the violation of the 2015 Criminal Code, amended and supplemented in 2017, since organized groups got into the business of the trade, smuggling, and trafficking of counterfeit medical supplies, equipment, and essential goods for the prevention and control of the COVID-19 pandemic. Nevertheless, it was evident that dealing cases of smuggled drugs related to the treatment of COVID-19, which are reported to have been obtained from China, has remained a complicated issue for the Vietnamese government¹¹. Overall, the article confirms how the COVID-19 pandemic paved the way for more orchestrated moves to perpetuate medicine smuggling in and or through Vietnam. As a result, such moves have revealed that law enforcement bodies continue to face the challenge of resource constraints in terms of technology and infrastructure in their quest to combat medicine smuggling.

The complexity of handling cases related to smuggling drugs, medicines, or pharmaceutical products has been observed whenever the objects found in the case included both drugs and non-drug items. According to the National Steering Committee 389, in 2022, smuggling and trade fraud remained complex. Various ministries, localities, and functional forces detected and seized nearly 140,000 cases, criminally prosecuting 720 violators. Major smuggled items included drugs, fireworks, cigarettes, endangered wildlife, and counterfeit goods such as fertilizers, pesticides, sugar, gold, foreign currency, medical supplies, pharmaceuticals, and medicinal materials. To try and address the complexity of smuggling drugs, the article pointed that since most smuggling cases reported were between the Vietnam-China border, it was agreed that China would construct a fixed fence. This fence, along the border was expected to significantly reduce the smuggling of drugs on the northern Vietnam border. While this was a working solution for the northern border, it was also noted that the Vietnam-Cambodia and Vietnam-Laos borders remain unattended, hence a continued risk of smuggling activities on these borders and transiting to China. The article also points out that smuggled drugs, medicine, and pharmaceutical products have had their way to Vietnam from other countries through air transport, arriving in the country as gifts. As a result, it has remained a challenge to counter such smuggling moves¹². An article by Tran et al.¹³ confirms that China has made significant progress in constructing the border wall, enhancing security, and preventing smuggling activities at the northern Vietnam border. However, the article confirms that China has been very strategic in its quest to develop the border wall, as observed from the inequalities and development gaps between the two countries. As a result, coupled with factors like a lack of initiative from Vietnam to erect border walls in areas such as Vietnam-Laos and Vietnam-Cambodia, the current study notes that Vietnam still struggles to provide sufficient infrastructure to combat smuggling activities across its borders.

According to consolidated data on anti-smuggling, trade fraud, and counterfeit goods operations regarding pharmaceuticals, cosmetics, and dietary supplements nationwide from 2019-2022, 21,823 cases were detected and processed, including 5,786 cases of smuggled goods trading, 14,801 cases of trade fraud, and 1,236 cases of counterfeit goods. These comprised 9,654 pharmaceutical cases, 9,203 cosmetics cases, and 2,197 dietary supplement cases. Administrative penalties were applied to 21,161 cases, contributing over 180 billion VND to the State budget. Criminal prosecution was pursued for 84 cases/108 suspects, including 39 cases/49 suspects related to pharmaceuticals and 48 cases/59

¹¹ Communist Party of Vietnam Online Newspaper, "Increasing Trend in Counterfeit Pharmaceutical Smuggling," January 14, 2022, accessed November 19, 2024, <https://dangcongsan.vn/phap-luat/tinh-trang-buon-lau-tan-duoc-gia-gia-tang-602085.html>.

¹² Tien Phong Online Newspaper, "Detecting 140,000 Cases of Smuggling and Trade Fraud in 2022," February 22, 2023, accessed November 24, 2024, <https://tienphong.vn/phat-hien-140000-vu-buon-lau-gian-lan-thuong-mai-trong-nam-2022-post1512078.tpo>.

¹³ Ngoc Diem Tran, Hau Trung Nguyen, and Thuy T. Dang, "Vietnamese Frontier Worker Across Vietnam: China Border Case Study of Two Provinces Ha Giang and Quang Ninh," *Chinese Journal of International Review* 5, no. 2 (2023): 176-186.

suspects related to cosmetics and dietary supplements.¹⁴ The article reports on a workshop held and attended by Vietnamese government officials from the Ministry of Health, public security, science, and Technology, as well as Industry and Trade, to discuss how the vice of smuggling drugs and counterfeit goods can be addressed. The proceedings from this article demonstrate the proactive approach to fostering public sensitization in the quest to combat smuggling of drugs, medicine and pharmaceutical products, especially from the lens of empowering the government officials who are mandated with enforcing the law.

Additionally, most of the workshops and meetings in Vietnam have ensured that other than the representation from the various governmental ministries, the actual players in the field of the production of drugs sit at the same table to discuss the solutions. For instance, in a significant workshop setting held in 2023, the enterprises producing and trading pharmaceuticals, cosmetics, and functional foods in Vietnam, the Vietnam Association for Anti-Counterfeiting and Brand Protection, and members of the National Steering Committee against smuggling, trade fraud, and counterfeit goods (National Steering Committee 389) were brought together¹⁵. One of the key outcomes from the workshop was that the vice of smuggling does not just affect the business but erodes the trust that the public has in these agencies to produce, trade, and distribute quality drugs, medicines, and, or pharmaceutical products. Furthermore, it was evident that the impacts of having counterfeit products in the market are long-term and direct, especially on the lives, health, and economy of the Vietnamese people.

The move by the Vietnamese government to establish a National Steering Committee 389 has played a significant role in exerting specialized force to combat the problem of smuggling drugs. The committee coordinates among various government agencies by focusing on implementing practical approaches not only to prevent but also to address drug smuggling in Vietnam. The committee's significance and uniqueness lie in streamlining operations, fostering collaboration within law enforcement agencies, and improving intelligence sharing when it comes to smuggling drug smuggling. Additionally, the National Steering Committee 389 has specifically been mandated to develop and support initiatives to sensitize the public about drug smuggling and related crimes. Some notable achievements of National Steering Committee 389 have been increased case resolution, strengthened legal frameworks¹⁶ and enhanced resource allocation to combat drug smuggling and related crimes¹⁷. Additionally, under Decision No. 195/QD-BCD 389, which sets the specific instruments to receive and handle information, the National Steering Committee 389 has significantly contributed to the relevance, authenticity, and clarity of the information received relating to smuggling, trade fraud, and counterfeit goods¹⁸. This approach has played a significant role in ensuring that the legal criteria for confirming a smuggling case or charge is respected, which brings about proper understanding hence justice.

The issuance of directive No. 17/CT-TTg on June 19, 2018, by the then-prime minister of Vietnam,

¹⁴ Government Online Newspaper, "Đồng Bộ Các Giải Pháp Phòng, Chống Buôn Lậu Hàng Giả Đối Với Dược Phẩm, Thực Phẩm Chức Năng" [Comprehensive Solutions to Combat Smuggling and Counterfeit Goods in Pharmaceuticals and Functional Foods], September 2023, accessed November 20, 2024, <https://baochinhphu.vn/dong-bo-cac-giai-phap-phong-chong-buon-lau-hang-gia-doi-voi-duoc-pham-thuc-pham-chuc-nang-102230928153459189.htm>.

¹⁵ Government Online Newspaper, "Đồng Bộ Các Giải Pháp Phòng, Chống Buôn Lậu."

¹⁶ Viet Nam Customs Portal, "Vietnam Customs Achieves Encouraging Results in Combating Smuggling and Violations in the First Half of 2024," July 2024, accessed November 28, 2024, <https://quangnam.customs.gov.vn/index.jsp?pageId=2281&aid=204801&cid=4099>.

¹⁷ Vietnam Law Magazine, "Better Capacity, Coordination Needed in Fight Against Smuggling, Trade Fraud: Deputy PM," December 5, 2023, accessed November 28, 2024, <https://vietnamlawmagazine.vn/better-capacity-coordination-needed-in-fight-against-smuggling-trade-fraud-deputy-pm-69840.html>.

¹⁸ Tilleke and Gibbins, "Vietnam Issues Regulations on Receipt and Handling of Information on Smuggling, Trade Fraud, and Counterfeit Goods," April 7, 2020, accessed November 28, 2024, <https://www.tilleke.com/insights/vietnam-issues-regulations-receipt-and-handling-information-smuggling-trade-fraud-and-coun/38/>.

Nguyễn Xuân Phúc, was another game changer for the fight against drug smuggling and its related crimes. The decision sought to strengthen the combat against smuggling, trade fraud, and the production of counterfeit pharmaceutical products. The directive emphasizes various controls, such as ensuring increased inspections, especially for the manufacturers and distributors of drugs and pharmaceutical products. Furthermore, the decision encouraged and pushed for more collaboration amongst government agencies such as the ministry of health as well as the ministry of science and technology to ensure that the vice is tackled effectively and the public is sensitized from an informed perspective¹⁹. Looking at the provisions from directive No. 17/CT-TTg, it is evident that the Vietnamese government sought to tackle the aspects of consumer protection, public health safeguards and market integrity, which had previously been threatened by drug smuggling events. However, being a complex issue, the application of the directive No. 17/CT-TTg continues to face five major bottlenecks. First, it has been reported that in as much as there are efforts to combat drug smuggling and its related crimes, smugglers continue to be creative, employing more sophisticated means to orchestrate drug smuggling²⁰. As a result, it continues to challenge the enforcers to adapt and constantly improve their ways to tackle smuggling. Secondly, digital marketing and the widespread its adoption in e-commerce has been found to complicate the means to tackle drug smuggling. The social media platforms remains to be an arena that smugglers use to propagate misinformation about health products making it difficult to combat counterfeit products. Tied to the second challenge, the third challenge legal framework gaps which may not keep up with the creativity of the smugglers, and, or trader fraudsters which hampers both the prosecution and the enforcement processes²¹. Fourthly, instances of corruption and conflict of interest within the enforcers themselves becomes a major challenge to successfully combat drug smuggling and its associated crimes. Finally, limited resources for the enforcement makes some of the enforcement quests unrealistic hence unachievable²². This paper acknowledges that addressing these challenges require a multi-faceted approach. These integrated approaches include fostering public sensitization, improving the legal frameworks, strengthening the international cooperation and enhancing the enforcement capabilities as far as drug smuggling and associated crimes are concerned.

In the first 8 months of 2023, Ho Chi Minh City detected over 600 cases of counterfeit pharmaceuticals valued at over 10,5 billion VND, including one case leading to criminal prosecution of 8 defendants²³. The trial of the 8 criminals is a clear indication of the legal consequences under the Vietnamese 2015 Criminal Code, amended and supplemented in 2017. Cases detected in the area show that medical items, including pharmaceuticals, dietary supplements, and cosmetics, are commonly counterfeited and smuggled, with increasing scale and sophistication in both organization and methods²⁴. This scenario in Ho Chi Minh City reflects a growing concern over counterfeit drugs and pharmaceutical products, as well as the measures in place to address the same. Additionally, the scenario brings to the public's attention the need for added vigilance, robust enforcement measures, and public education to

¹⁹ Center for Strategic and International Studies (CSIS), "Prime Minister Pham Minh Chinh Ahead of U.S.-ASEAN Summit," May 11, 2022, accessed November 28, 2024, <https://www.csis.org/analysis/prime-minister-pham-minh-chinh-ahead-us-asean-summit>.

²⁰ Tilleke and Gibbins, "Vietnam Prime Minister Issues Directive Combatting Pharmaceutical and Cosmetics Fakes," June 28, 2018, accessed November 28, 2024, <https://www.tilleke.com/insights/vietnam-prime-minister-issues-directive-combatting-pharmaceutical-and-cosmetics-fakes/>.

²¹ Ton Nu Thanh Binh and Hoang Thi Ngoc Anh, *State Practice of Asian Countries in International Law* (2023).

²² Viet Nam News, "Digital Technology Applications Key to Combating Smuggling, Trade Fraud, and Counterfeit: Deputy PM," August 9, 2024, accessed November 28, 2024, <https://vietnamnews.vn/economy/1660864/digital-technology-applications-key-to-combating-smuggling-trade-fraud-and-counterfeit-deputy-pm.html>.

²³ CustomsNews, "Ho Chi Minh City: Prosecuting Many Cases of Smuggling and Trading Counterfeit Goods," June 15, 2024, accessed November 28, 2024, <https://english.haiquanonline.com.vn/ho-chi-minh-city-prosecuting-many-cases-of-smuggling-and-trading-counterfeit-goods-30366.html>.

²⁴ SGGPO, "The Vietnamese Ministry of Health Has Repeatedly Issued Warnings About the Prevalence of Counterfeit and Substandard Drugs. Consuming Such Products Can Exacerbate Health Conditions and Even Pose Life-Threatening Risks," August 17, 2024, accessed November 28, 2024, <https://en.sggp.org.vn/recent-surge-in-counterfeit-and-substandard-drugs-in-vietnam-post111864.html>.

protect the health and safety of the public. In the first 9 months of 2024, southwestern provinces detected, seized, and processed 39,017 smuggling and trade fraud cases, criminally prosecuting 810 cases involving 1,132 suspects. State budget contributions exceeded 2,854 billion VND. Major smuggled items included fireworks, cigarettes, sugar, household goods, electronics, refrigeration equipment, pharmaceuticals, cosmetics, and dietary supplements.²⁵ The above case scenario, being the most recent, brings up key issues with regards to the measures put in place to combat drug smuggling and trafficking of counterfeit pharmaceutical products. First, it is clear that there has been a significant increase in counterfeit pharmaceutical products compared to 2023. This kind of rise suggests that there could be significant gaps in the quality control and oversight of pharmaceutical products at the production level. Additionally, this case implies that whenever there is a lack of quality control at the production level, the budget implications for the Vietnamese government at the prosecution level are substantial. The findings presented from the first nine months of 2024 imply an urgent need for comprehensive and synergetic strategies to address the vice of smuggling and fraud in trade, especially in the southwestern provinces of Vietnam. Smuggling in recent years has become increasingly complex and diverse regarding smuggled goods. Pharmaceuticals and dietary supplements consistently remain everyday items in smuggling cases. Prosecuting smuggling crimes in general and pharmaceutical smuggling in particular currently depends on the severity of the violation, with administrative or criminal penalties applied accordingly.

5. Analysis of Criminal Penalties for Smuggling Offenses

5.1. Types and Levels of Penalties for Smuggling

Since smuggling subjects can be individuals or commercial legal entities, criminal penalties are specified separately for each type of subject. According to Article 118 of the 2015 Criminal Code (amended and supplemented in 2017):

Penalties for individual offenders: Include primary penalties of fines or imprisonment. The acceptable ranges for individuals range from 50,000,000 VND (fifty million Vietnamese dong) to 5,000,000,000 VND (five billion Vietnamese dong). Prison terms range from 6 months to 20 years. Offenders may also face additional penalties, including fines, prohibition from holding certain positions or practicing certain professions for 1-5 years, or partial or complete property confiscation.

Penalties for commercial legal entities: Primary penalties include fines, temporary suspension of operations, or permanent closure. Fines range from 300,000,000 VND (three hundred million Vietnamese dong) to 15,000,000,000 VND (fifteen billion Vietnamese dong). Operational suspensions range from 6 months to permanent closure.

Additionally, the law stipulates additional penalties for commercial legal entities, including fines or prohibitions on business activities, restrictions in specific fields, or capital mobilization bans for 1-3 years.

Compared to the penalties for smuggling offenses stipulated in Article 153 of the 1999 Criminal Code, amended and supplemented in 2009, the penalties under Article 188 of the 2015 Criminal Code, amended and supplemented in 2017, are more severe. Specifically, the highest penalty framework was life imprisonment (the 1999 Criminal Code prescribed the death penalty as the maximum penalty), while under the new regulations, the maximum penalty is 20 (twenty) years imprisonment.

A significant innovation is that while the 1999 Criminal Code amended and supplemented in 1999 did not address commercial legal entities as subjects, the 2015 Criminal Code amended and supplemented in 2017 includes criminal liability for commercial legal entities. This addition stems from economic

²⁵ Vietnam Law Online Newspaper, Ministry of Justice, "Ban Chỉ đạo 389 Khu vực Nam Bộ Phát Hiển, Xử Lý Hơn 39 Nghìn Vụ Buôn Lậu, Gian Lận Thương Mại" [Southern Steering Committee 389 Discovers and Handles Over 39,000 Cases of Smuggling and Trade Fraud], October 23, 2024, accessed November 19, 2024, <https://baophapluat.vn/ban-chi-dao-389-khu-vuc-nam-bo-phat-hien-xu-ly-hon-39-nghin-vu-buon-lau-gian-lan-thuong-mai-post529510.html>.

developments and the reality of commercial legal entities engaging in smuggling, necessitating criminal penalties for these particular subjects to ensure social justice and legal application.

5.2. Case Study Spotlight

To better illustrate the application of criminal penalties against smuggling activities, the author presents a specific case that the Court has adjudicated, summarized as follows:²⁶

In late April 2017, defendant Luong Thi Kim Ch purchased 41 packages of pharmaceutical products from MEDIMPEX ECZA DEPOSU A.S Company (Turkey). Subsequently, Ch hired someone to handle customs procedures for the transit shipment and transport the goods to Cambodia.

On May 4, 2017, the shipment cleared customs at Tan Son Nhat Airport Customs Sub-department and was transported by truck to Moc Bai border gate in Tay Ninh Province. The shipment underwent export procedures to Cambodia and was stored in a house near the border area in Ba Vet District, Svay Rieng Province.

Afterward, Ch arranged for defendants Ho Hai D and Cao Hien H to drive vehicles through border trails to transport the pharmaceuticals back to Ben Cau District, Tay Ninh Province, and then to Ho Chi Minh City, where they were stored in a warehouse in Nguyen Tat Thanh Street, District 4.

On the morning of May 9, 2017, as Cao Hien H was transporting the goods to the warehouse, law enforcement intercepted the shipment before unloading. The pharmaceutical products were valued at 7,000,000,000 VND (seven billion Vietnamese dong). They lacked registration numbers or import permits from the Drug Administration of Vietnam, making them illegal for circulation in Vietnam.

On July 16, 2020, the Ho Chi Minh City People's Court conducted the trial and sentenced defendant Luong Thi Kim Ch to 05 (five) years imprisonment for smuggling. The two defendants, Ho Hai D and Cao Hien H, were each sentenced to 02 (2) years imprisonment for illegal cross-border transportation of goods.

However, defendant Luong Thi Kim Chi appealed the verdict, requesting a reduction in punishment. During the appellate proceedings, the High Court in Ho Chi Minh City disagreed with the initial valuation and instead based its judgment on the invoice, bill of lading, and customs declaration showing the shipment's value at USD 68,192.74 (equivalent to 1,568,433,000 VND) to determine the shipment's value to reduce Ch's sentence from 05 (five) years to 02 (two) years and 03 (three) months imprisonment, violating asset valuation regulations. Consequently, on January 29, 2024, the Supreme People's Court issued a Cassation Decision annulling the appellate judgment and upholding the first-instance judgment, noting that:

Luong Thi Kim Ch's criminal conduct falls under Point A (illegal goods valued at 1,000,000,000 VND or more) of Clause 4, Article 188 of the Criminal Code, carrying a prison sentence of 12 to 20 years. The first-instance court determined that Ch had a good background, was a first-time offender, and "made sincere declarations and showed remorse" at trial, warranting the application of mitigating circumstances under Point s, Clause 1, and Clause 2 of Article 51 of the Criminal Code. However, the first-instance court's additional application of the mitigating circumstance "crime committed but no damage caused" under Point h, Clause 1, Article 51 of the Criminal Code was inappropriate. Thus, the five-year prison sentence was considered lenient. Nevertheless, considering that Luong Thi Kim Ch had a good background, was a first-time offender, all criminal assets were promptly confiscated, she received no benefits, and has a young child (born in 2011), it was deemed unnecessary to annul the entire first-instance judgment for retrial, but rather only to annul the appellate judgment regarding Luong Thi Kim Ch and maintain the first-instance decision on punishment, which was considered

²⁶ Decision No. 06/2024/HS-GDT, January 29, 2024, accessed November 24, 2024, <https://congbobanan.toaan.gov.vn/2ta1445155t1cvn/chi-tiet-ban-an,%20accessed%20November%202024,%202024>.

sufficient for specific deterrence and general prevention.

The above case went through both first-instance and appellate trials and the cassation procedure of the Supreme People's Court. This demonstrates that the valuation of smuggled goods or items is crucial in determining the penalty framework applied to the defendant. Additionally, applying appropriate penalties that correspond to the nature and severity of the criminal act and each defendant's role in the case is vital. The first-instance court's determination that defendant Chi committed a crime under Point A, Article 188 of the 2015 Criminal Code, amended and supplemented in 2017, with one mitigating circumstance under Point s, Clause 1, Article 51, and a mitigating circumstance under Clause 2, Article 51 of the Criminal Code to apply Article 54 regarding penalty reduction, was not entirely appropriate. According to Clauses 1 and 2 of Article 54, the conditions for penalty reduction or imposing a lighter sentence than the applicable framework require at least two mitigating circumstances under Clause 1, Article 51 (Ch had only one mitigating circumstance under Clause 1, Article 51) or apply to first-time offenders who played an insignificant role as accessories in joint crimes. In this case, defendant Ch did not meet the conditions in Article 54 of the Criminal Code.

For its part, the Cassation Decision also determined that the first-instance court's five-year prison sentence was lenient but maintained that since all smuggled goods were promptly confiscated, Ch was a first-time offender who had not profited from the crime and has a young child, the first-instance sentence should be upheld.

Based on the proceedings and the case outcome, as mentioned earlier, the current study has the following observations: first instance, appellate, and cassation - were quite lenient toward defendant Ch. While this demonstrates the law's clemency, it may reduce the effectiveness of criminal penalties against this type of crime. Ch's offense fell within the 12-20 year imprisonment framework but ultimately received a sentence lighter than the adjacent framework. This study disagrees with this handling and believes the appellate judgment should have been annulled with the case returned for retrial at the appellate level by Article 54 of the Criminal Code, increasing Ch's sentence to ensure proportionality with the nature and severity of the violation.

From another perspective, pharmaceutical smuggling is more dangerous than smuggling other goods, and the fact that defendant Ch failed to distribute the drugs to the domestic market was beyond her subjective intent. If sold, these drugs could have long-term consequences, not only resulting in tax losses for the State but also affecting public health, eroding public trust in State management, causing public concern, and negatively impacting the stable, healthy development of the business environment and social order. Therefore, it is believed that more severe sentences are needed for medicine smuggling and the smuggling of pharmaceutical raw materials.

6. Current Causes of Medicine Smuggling

Medicine is one of the products which are very essential to the life of human beings. As a result, producers and distributors of medicine products take advantage of this need to smuggle or supply counterfeit medicine. The profit margins of medicine smuggling are notably higher than those for many other goods. Since health products are essential and often deemed invaluable, consumers are frequently willing to pay a premium for medications that treat illnesses or safeguard their well-being. This is particularly true for pharmaceuticals branded from countries like the United Kingdom, the United States, Australia, and Canada.

In recent years, hospitals have increasingly encountered drug shortages, resulting in patients who cannot obtain necessary medications even when financial resources are available. Consequently, patients and their families must seek alternatives through external trading channels. Individuals with adequate knowledge can navigate this landscape by selecting reputable sellers, verifying the origins of products, and assessing the credibility of sellers or registered pharmaceutical trading channels. However, those lacking such knowledge are often vulnerable to misleading advertisements, leading them to purchase smuggled products at inflated prices, with the quality of these products remaining uncertain.

Pharmacies motivated by profit may also import smuggled drugs at lower prices, often disregarding the potential consequences of their actions. The current landscape of pharmaceutical trading has become alarmingly accessible, with sellers utilizing social media platforms such as Zalo, Facebook, TikTok, and Telegram to market their products. Many of these sellers falsely present themselves as traditional healers or licensed pharmacists, employing counterfeit business registrations to gain consumer trust while distributing smuggled pharmaceuticals.

As economic development progresses, lifestyle-related diseases have risen among adults and children. This increase in health issues has heightened the demand for home treatment and self-health management, creating opportunities for unscrupulous traders to escalate their smuggling activities. Furthermore, inadequate surveillance at customs checkpoints has facilitated opportunities for certain officials to accept bribes from smugglers, resulting in the oversight of illegal imports.

Smugglers have adopted increasingly sophisticated methods to evade customs inspections, employing document forgery, goods switching, and various forms of disguise. Local authorities have not implemented sufficiently stringent measures to regulate pharmaceutical trading within their jurisdictions or to investigate and address the activities of online sellers of unregistered pharmaceutical products. This lack of oversight has contributed to the growing prevalence of these illicit activities.

Moreover, court judgments in cases of medicine smuggling often exhibit inconsistency and a lack of severity, failing to provide the necessary deterrent effect or educational impact required to prevent such offenses. The combination of these factors underscores the urgent need for a comprehensive approach to combat medicine smuggling, emphasizing the importance of regulatory enforcement, public awareness, and legal accountability.

7. Recommendations

Generally, the recommendations provided in this paper are a reflection of the significant findings from the media articles on the current status and the dynamics of drug smuggling and related crimes in Vietnam. As much as the current paper finds commendable provisions in the Vietnamese 2015 Criminal Code, amended and supplemented in 2017, significant improvements are meant to be made on the enforcement side, with minimal upgrades on the policy frameworks. The amendments made in 2017 were substantial, and the additional instruments, such as the establishment of the National Steering Committee 389, are a huge milestone for the country.

7.1. Solutions Related to State Agencies

Functional authorities at both central and local levels must adopt a proactive approach to monitoring situations related to pharmaceutical smuggling. This involves developing and implementing comprehensive inspection, examination, and investigation plans aimed at rigorously addressing all activities associated with the illicit trade of pharmaceutical products. Violations must be addressed promptly and strictly with legal standards.

Customs authorities should thoroughly review their procedures for inspecting and monitoring imported goods. This review should focus on identifying specific stages and steps within the process that smugglers may exploit to evade detection. By enhancing checkpoint inspection and monitoring protocols, customs officials can better safeguard against illicit activities.

Moreover, it is essential to strengthen the supervision of officials stationed at checkpoints. This includes ensuring that all imported goods undergo thorough and proper inspection procedures. The actions of both entrants and inspectors should be scrutinized from multiple perspectives to promote accountability and transparency.

Local authorities also play a critical role in monitoring business activities within their jurisdictions. Enhanced vigilance is necessary to detect and promptly address illegal pharmaceutical trading. This monitoring should leverage various public information channels to foster community engagement and awareness.

Furthermore, court proceedings must maintain consistency in interpreting and applying legal standards. While the law may allow for clemency in certain circumstances, it must also uphold principles of strictness, deterrence, education, and fairness for all parties involved. This balanced approach will enhance the effectiveness of legal proceedings and contribute to a more robust framework for preventing pharmaceutical smuggling. Evidently, through the implementation of the above-mentioned measures, enforcing authorities can create a more effective and responsive system to combat the challenges posed by the illegal trade in pharmaceuticals, ultimately safeguarding public health and welfare.

7.2. Solutions for the Public

To effectively combat pharmaceutical smuggling, it is essential to strengthen the dissemination of legal information and educational initiatives through various methods. These educational approaches should be diverse, accessible, and relatable, enabling individuals to grasp the significant dangers associated with medicine smuggling and the potential health risks posed by using pharmaceuticals of uncertain origin that are not distributed by reputable entities.

Citizens must empower themselves with knowledge that will enable them to make informed decisions and avoid purchasing smuggled or substandard goods that could jeopardize their health. By fostering a deeper understanding of the implications of engaging with illicit pharmaceutical products, individuals can better protect themselves and their communities from the adverse effects of such practices.

Incorporating interactive workshops, community outreach programs, and digital resources can enhance the effectiveness of these educational efforts. By tailoring content to resonate with diverse audiences, we can cultivate a more informed public that is vigilant against the risks associated with pharmaceutical smuggling. Ultimately, a well-informed citizenry is a vital component in the collective effort to combat the illicit trade in pharmaceuticals and safeguard public health.

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