

# SOLUTIONS FOR IMPROVING CURRENT CRIMINAL LAW ON THE CRIME OF MANUFACTURING AND TRADING COUNTERFEIT FOOD, FOODSTUFFS AND FOOD ADDITIVES

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## ABSTRACT

*This article analyzes and evaluates the current situation of criminal acts involving the production and trading of counterfeit food, foodstuffs and food additives, which are becoming increasingly complicated and sophisticated in Vietnam. On that basis, the article identifies the limitations and obstacles in the current provisions of the Vietnamese Criminal Code related to this type of crime, as well as the difficulties encountered during law enforcement. Accordingly, the authors propose comprehensive solutions to improve the criminal law system and enhance the effectiveness of law enforcement, prevention and combat against crimes involving the production and trading of counterfeit food, foodstuffs and food additives in Vietnam in the coming time.*

**Keyword:** *Solutions; counterfeit goods; production and trading of counterfeit goods; food, foodstuffs and food additives.*

## 1. INTRODUCTION

Currently, Vietnam is in the context of increasingly deep international economic integration and the strong development of a market-oriented economy, creating favorable conditions for significantly improving people's quality of life and material well-being. This has strongly stimulated consumer demand, especially for essential goods such as food, foodstuffs and food additives, which play a fundamental role in human survival and national security.

In practice, the production and trading of counterfeit food, foodstuffs and food additives in Vietnam have become one of the most pressing social issues, with increasingly bold, complex and sophisticated operations. There are many causes leading to this situation, such as the temptation of enormous profits and shortcomings in inspection and management activities. However, one of the causes that cannot be overlooked is the limitations of the current criminal law provisions governing this type of crime, particularly the difficulties in applying Article 193 of the Vietnamese Criminal Code (amended and supplemented in 2025). Therefore, studying the practical situation of crimes involving the production and trading of counterfeit food, foodstuffs and food additives in Vietnam is extremely urgent, thereby proposing

solutions to improve the current criminal law regulations concerning such acts in the near future.

## 2. CONTENT

### ***2.1. The Current Situation of Crimes Involving the Production and Trading of Counterfeit Food, Foodstuffs and Food Additives in Vietnam***

In recent years, crimes involving the production and trading of counterfeit food, foodstuffs and food additives in Vietnam have become extremely complicated and have shown an increasing trend in both scale and sophistication. Unlike ordinary goods, counterfeit food products directly infringe upon economic management order and seriously threaten the health and lives of millions of consumers. Although competent authorities have continuously conducted inspections and market controls, due to the enormous illegal profits involved, offenders still disregard legal risks and commit crimes through processing, mixing and packaging products under the names of reputable brands. This reality highlights an alarming issue: the absence of a unified legal concept distinguishing administrative violations from criminal offenses has created loopholes for criminals to exploit, requiring law enforcement

agencies to adopt stricter and more synchronized measures.

A typical example demonstrating the seriousness of this type of crime was the case that occurred in Thanh Hoa Province in September 2025. The Provincial People's Court brought to trial two defendants, Nguyen Huu N. and Trieu Y T., for the crime of producing and trading counterfeit food products. According to the case file, the defendants organized the production of thousands of counterfeit functional food products, blatantly falsifying information regarding origin, source and labels of various companies for market distribution. The total number of counterfeit products seized reached approximately 1,820 units, with a value equivalent to genuine products exceeding VND 336 million, enabling the defendants to illegally earn hundreds of millions of dong. As a result, the Court sentenced Trieu Y T. to three years' imprisonment and Nguyen Huu N. to five years' imprisonment. This case demonstrates that offenders are willing to sacrifice public health for economic benefits, while also reflecting that current judicial practice still heavily depends on quantitative criteria (such as product value and illegal profits) in determining criminal liability.

Another case illustrating the fragile boundary in assessing the dangerousness of such conduct was Judgment No. 40/2023/HS-ST dated November 21, 2023, issued by the People's Court of Buon Don District, Dak Lak Province. In this case, the defendant Nguyen Tan T. was prosecuted for the crime of producing and trading counterfeit food products. Based on the circumstances of the case, the Court sentenced the defendant to two years and nine months' imprisonment but suspended the sentence and imposed an additional monetary fine. This judgment shows that although the conduct satisfied all constituent elements of a criminal offense, the overall assessment did not result in isolating the defendant from society. In practice, many controversial cases regarding the legal nature of such conduct have also arisen, notably the scandal involving Kera vegetable candy products, revealing the confusion among procedural authorities in determining exactly when deceptive conduct concerning product quality and composition exceeds the threshold of administrative violations and becomes a criminal offense.

These cases demonstrate that crimes involving the production and trading of counterfeit food products pose a major challenge to food safety management in Vietnam. In particular, the trend of organized crime operating under the guise of commercial legal entities, with fragmented production processes designed to evade liability, is becoming increasingly common. Meanwhile, proving the element of fault or internal benefits within commercial legal entities remains extremely difficult. To effectively address these issues, urgent legislative improvements are required, including clarifying the concept of "counterfeit goods," establishing mechanisms for determining corporate fault and increasing criminal penalties (both imprisonment and fines) proportionate to the dangerous nature of these crimes, thereby ensuring deterrence and protecting public health.

## ***2.2. Assessment of Advantages and Difficulties in Applying Criminal Law to Crimes Involving the Production and Trading of Counterfeit Food, Foodstuffs and Food Additives***

### ***2.2.1. Achievements***

Although criminal activities remain complicated, efforts to prevent and combat crimes involving the production and trading of counterfeit food, foodstuffs and food additives have achieved certain accomplishments in both legislation and practical enforcement.

First, regarding institutional and criminal law development, the criminal law system has made significant progress as the 2015 Criminal Code (amended and supplemented in 2025) has clarified numerous provisions and distinctly separated counterfeit food and food additive offenses from ordinary counterfeit goods by establishing an independent offense under Article 193 of the Criminal Code. The separation of this offense accurately reflects the particularly dangerous nature of producing counterfeit essential products that directly affect human life and health, thereby facilitating more accurate determination of criminal liability and reducing the risk of overlooking crimes. The law has also expanded criminal liability to include commercial legal entities for this offense. Imposing criminal liability on commercial legal entities represents a progressive and distinctive feature, contributing to more effective prevention and combat against organized crimes conducted under the guise of

enterprises in the field of food safety. The improvement of subordinate legal documents, notably Decree No. 98/2020/ND-CP, has provided detailed and systematic legal definitions of counterfeit goods, categorizing them into distinct groups (counterfeit in content, counterfeit in form, etc.), thereby establishing an important basis for distinguishing criminal offenses from administrative violations.

Second, regarding practical enforcement and crime prevention, competent authorities from central to local levels have continuously implemented inspection and market control activities to promptly detect violations. In practice, efforts to detect and handle offenses have been strengthened significantly. For instance, in 2024, competent authorities discovered and handled as many as 8,959 cases related to food safety violations. These results indicate that criminal law has partly demonstrated its effectiveness in suppressing offenders and creating deterrent pressure against those intending to profit from the production and trading of counterfeit food products.

### **2.2.2. Limitations and Obstacles**

First, the current legal framework governing crimes involving the production and trading of counterfeit food, foodstuffs and food additives still contains numerous shortcomings and lacks consistency. Although the 2015 Criminal Code (amended and supplemented in 2025) has clarified many provisions, fundamental concepts such as “counterfeit goods,” “substandard goods,” and “unsafe food” are scattered across various legal documents, including the Law on Food Safety and administrative sanction decrees. The absence of unified legal criteria creates major difficulties in distinguishing criminal liability from administrative violations. Since there are no specific quantitative guidelines, identical conduct may be assessed differently by competent authorities and subject to inconsistent sanctions. This situation not only undermines the strictness of the law but also creates risks of either overlooking crimes or criminalizing ordinary administrative violations.

Second, proving the constituent elements of crimes in practice encounters numerous difficulties, particularly in determining the “counterfeit” nature of products and the social danger posed by such conduct. In order to

prosecute and determine penalty frameworks, procedural authorities must gather sufficient evidence proving that products fail to meet quality standards, do not conform to announced specifications or falsify origin and source information. However, these issues are highly specialized and beyond the ordinary assessment capacity of investigative agencies, requiring reliance on professional forensic examinations.

In practice, the process of examining product composition, quality and origin is often prolonged, costly and dependent on the capacity of specialized agencies. In some cases, forensic conclusions among agencies lack consistency and may even differ in evaluation methods, resulting in difficulties in determining the true nature of violations. This not only affects the progress of case resolution but also weakens the certainty of the grounds for prosecution.

Moreover, the absence of specific quantitative criteria for assessing the level of harm to human health is another significant limitation. Since the consequences of producing and trading counterfeit food products may not appear immediately, proving the causal relationship between the unlawful conduct and actual damage becomes more complicated. As a result, procedural authorities often face confusion in determining criminal charges and appropriate penalty frameworks, potentially prolonging case resolution or reducing the effectiveness of criminal handling in practice.

Third, the continuous evolution of criminal methods and tactics poses significant challenges to investigative work. Offenders now operate in highly organized, interprovincial and cross-sectoral networks while thoroughly exploiting cyberspace and e-commerce platforms to advertise and distribute counterfeit goods. Counterfeiting methods have become increasingly sophisticated, ranging from copying packaging and labels to forging quality certification documents issued by state authorities. The anonymity and flexibility of technology make tracing product origins, collecting electronic evidence and identifying the roles of individuals within criminal networks extremely difficult for law enforcement agencies.

Fourth, the professional capacity of personnel and infrastructure conditions have not fully met the practical requirements of crime prevention and

combat. Resolving cases related to food safety requires investigators, procurators and judges not only to possess solid legal expertise but also to understand food technology, chemistry and testing processes. In reality, specialized human resources in this field remain insufficient, while testing equipment systems are not fully synchronized, significantly hindering the speed and quality of investigations. In addition, mechanisms for information sharing and coordination among interdisciplinary forces (Police, Market Surveillance, Customs, Health authorities, etc.) are in some cases still slow and inconsistent, reducing the effectiveness of dismantling large-scale criminal organizations.

Fifth, barriers arising from socio-economic factors and legal awareness continue to negatively affect the effectiveness of crime prevention and combat in this field. In practice, profits gained from producing and trading counterfeit food products are extremely high, while investment costs are low and the likelihood of detection and punishment is not always timely, leading many offenders to disregard legal regulations for illicit gains. In some cases, although sanctions are prescribed by law, they remain insufficiently proportionate to the dangerous nature and severity of the conduct, thereby limiting deterrent effects.

Furthermore, legal awareness among some business entities and consumers remains inadequate. Consumers' preference for low-priced goods and lack of concern regarding product origin and quality have unintentionally created a broad market for counterfeit goods. This not only increases demand for low-quality products but also indirectly facilitates and encourages ongoing violations. In the long term, this situation not only causes economic losses but also seriously threatens public health security and undermines public trust in the market.

### **3. SOLUTIONS FOR IMPROVING THE EFFECTIVENESS OF APPLYING CRIMINAL LAW TO CRIMES INVOLVING THE PRODUCTION AND TRADING OF COUNTERFEIT FOOD, FOODSTUFFS AND FOOD ADDITIVES IN VIETNAM IN THE COMING TIME**

#### ***3.1. Solutions for Improving Legal Provisions on Crimes Involving the Production and Trading of Counterfeit Food, Foodstuffs and Food Additives***

First of all, it is necessary to develop and codify a unified concept of "counterfeit goods,"

particularly in the field of food, foodstuffs and food additives. Unifying this concept would not only overcome the current situation of fragmented and inconsistent regulations but also establish a clear legal basis for criminal classification and law enforcement in practice.

Next, it is necessary to clearly distinguish between counterfeit goods in terms of content and counterfeit goods in terms of form. Counterfeit goods in terms of content refer to products that fail to meet declared quality standards or composition requirements and pose direct risks to consumer health, whereas counterfeit goods in terms of form involve the falsification of packaging and labels intended to deceive consumers. This distinction would help accurately determine the nature and level of danger posed by the conduct and serve as a basis for applying appropriate sanctions.

In addition, more specific provisions should be introduced regarding the objective acts constituting the offense, particularly the acts of "production" and "trading" of counterfeit goods. Clarifying the legal characteristics of each act, including intermediary activities such as processing, packaging, transportation and distribution, would contribute to ensuring uniform application of the law and limiting the omission of unlawful acts.

Finally, regulations concerning criminal liability for commercial legal entities should continue to be improved, especially in the context where violations are increasingly organized, involve clear divisions of roles and are carried out on a large scale. In practice, many acts involving the production and trading of counterfeit goods are conducted under the guise of enterprises, making it difficult to determine responsibility and impose comprehensive sanctions. Therefore, improving the law by specifying the conditions for criminal liability of legal entities is essential, particularly by clarifying the relationship between the acts of individuals and the will of the legal entity during the commission of crimes.

At the same time, the system of sanctions applicable to commercial legal entities should continue to be reviewed and improved in a more diverse, flexible and proportionate manner according to the nature and severity of the offense. Enhancing the effectiveness of penalties such as fines, suspension of operations, business

prohibitions or compulsory remedial measures would not only strengthen deterrence but also contribute to general prevention and ensure legal compliance in production and business activities.

### ***3.2. Solutions for Enhancing the Effectiveness of Law Enforcement Regarding Crimes Involving the Production and Trading of Counterfeit Food, Foodstuffs and Food Additives***

To ensure effective implementation of legal provisions in practice, inspection and supervision activities throughout the entire process from production to circulation of goods should be strengthened. Tight control over these stages would not only facilitate the timely detection and handling of violations but also help prevent counterfeit goods from entering the market.

In addition, the professional capacity and technical conditions of competent authorities should be enhanced, particularly in activities involving testing and quality assessment of food, foodstuffs and food additives. At the same time, establishing close coordination mechanisms among law enforcement agencies such as the police, market surveillance authorities and health agencies would contribute to improving the effectiveness of crime detection, investigation and handling.

Furthermore, it is necessary to promote the application of science and technology in management and product traceability in order to increase market transparency, especially through the development of digital databases, product information coding systems and interconnection among regulatory agencies. The application of technology would not only effectively support inspection and supervision activities but also facilitate the rapid detection of violations and reduce fraud in production and commercial activities.

At the same time, legal dissemination and education should be strengthened for business entities and consumers through diverse methods appropriate to different target groups. Improving legal awareness would not only contribute to fostering compliance in production and business activities but also help consumers proactively identify and avoid counterfeit goods, thereby creating a sustainable and long-term crime prevention mechanism.

Typical examples of the application of science and technology include the National Food Safety Information System managed by the Food Safety Department. This system allows QR code scanning to verify product authenticity directly at retail shelves. In addition, AI algorithms could be integrated into the system to automatically identify counterfeit label “copies” through image recognition and big data analysis to detect shipments with unusual transportation routes.

Another solution is the establishment of a data-sharing mechanism between consumer applications such as iCheck and the databases of regulatory authorities. Allowing consumers to scan QR codes to compare actual product information would create a widespread community monitoring network, enabling authorities to receive reports about newly emerging harmful food additives on the market as quickly as possible.

### **3. CONCLUSION**

The crime of producing and trading counterfeit food, foodstuffs and food additives is one of the particularly dangerous offenses that not only infringes upon the economic management order but also directly affects consumers’ health and lives, while simultaneously undermining public trust in the market and the state management system. In the context of an increasingly developing market economy, together with the growing scale, complexity and sophistication of unlawful acts, the control and handling of this type of crime impose increasingly demanding requirements on both the legal system and enforcement mechanisms. Practical application of the law shows that although the current legal framework has gradually been improved, certain limitations still remain, particularly in defining counterfeit goods, distinguishing different forms of unlawful conduct and establishing mechanisms for determining liability of related subjects, especially commercial legal entities. These shortcomings partly reduce the effectiveness of crime prevention and combat in practice and create legal loopholes that may be exploited. Accordingly, the continued improvement of legal provisions in a clear, consistent and practice-oriented manner is an inevitable requirement. At the same time, enhancing the effectiveness of law enforcement through strengthening the capacity of competent authorities, improving coordination mechanisms and promoting the application of

science and technology in management should also be emphasized. Only when these solutions are implemented comprehensively and effectively can they contribute to improving the effectiveness of preventing and combating crime, protecting consumer rights and ensuring the stable and healthy development of the market under current socio-economic conditions.

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