DISCUSSION

EQUIVALENCE FORMULATION BETWEEN PRISON SENTENCES AND FINE SENTENCES THAT PRIORITISING FINE SENTENCES

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Abstract: *The orientation of law reform is agreed towards the application of restorative justice. Hence, an equivalence formulation between penal and fine sentences is urgently required. This normative research of legal studies proposed an equivalence formulation between prison and fine sentences. It resulted in prioritising fine sentences as a more preferred sentence while ensuring justice for the victim(s) and the community as represented by the state. This research presented a reform to amend the same weaknesses of the current penal or criminal law system in defining alternative sentences to prison sentences, which from an economic analysis perspective, was impossible to be chosen by the Judges. This research proposes an amendment that promotes financing the victim(s) and the community's restorative effort. Besides that, it convinces the judges to pass a double-track sentence, both prison and fine sentences, because both can be valued and have equal consequences.*

Keywords: *criminal law reform, criminal policy, double track sentencing system, economic analysis of law, restorative justice*

1. INTRODUCTION

This research was conducted based on the findings of the inequivalence between custodial sentences (or prison sentences) and their alternative fine sentences. It also contains alternatives or subsidiary sentences to the fine sentences in its other formulation. The formulation model of current penal sentencing can be identified as a double alternative with a value that is getting smaller from the perspective of economic analysis of the law and has never been seen in any other legal research.

In the formulation model of sanction threats in Indonesia's Penal Criminal Code (called *Kitab Undang-undang Hukum Pidana*, hereinafter abbreviated *KUHP*) used an example in theft offense. It stated in Article 362 *KUHP* and Article 30 paragraphs (5) and (6) of *KUHP*, with the latest amendments of fine sentences by Supreme Court Regulation Number 2 Year 2012 (*Peraturan Mahkamah Agung* No. 2 Tahun 2012, hereinafter abbreviated PERMA No. 2 Tahun 2012) the sentence states: *"dengan pidana penjara paling lama lima"* (5) *"tahun atau pidana denda paling banyak sembilan ratus ribu rupiah" (IDR900,000) subsider "sanksi pidana kurungan maksimum enam (6) bulan"* or in English: with a maximum imprisonment of five years or a maximum fine of nine hundred thousand rupiahs with an alternative (or a substitute) of a maximum of six months of penal detention. This ruling shows the irrationality between the main penal or criminal sentence, which is the maximum 5 years of imprisonment, can be substituted with a maximum of 6 months of detention if a fine sentence is ruled by the judges.

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A simple economic analysis study is also proposed to view the weight equivalence between penal prison sentences (custodial sentence or imprisonment) and fine sentences as seen from the public's point of view. It is viewed that the assessment between the fine sentence and the custodial sentence in formulating the criminal sentence above in units per month is as follows IDR900,000 for five years, showing a ratio of IDR180,000/year or IDR15,000/month, which is equivalent to US$1.0337/month. The value is too low compared to the average Regional Minimum Wage in Indonesia varies in each city and province; according to minimum-wage.org, the average value is $1,027.00/year or US$85.58/month (IDR1.241.765,8/month).[1] The fine threat maximum of IDR900,000, which is stated in the Second Book of KUHP, is used as an alternative to more than one maximum prison sentence, such as in the theft offense (Article 362 KUHP) with a maximum of 5 years imprisonment, and sentences as varied as three weeks imprisonment (Article 172 and 174), three months (Article 482), nine months (Article 227), and four years (Article 372, 480 points 1, 480 points 2 KUHP).

A similar condition appears in the provision of criminal sentences in the Netherlands Criminal Code version 2012 (in Dutch: *Wetboek van Strafrecht* 2012 version, in the future abbreviated as WvS 2012)[2] In the Netherlands, the theft offense is described in Section 310 as quoted: "a term of imprisonment not exceeding four years or a fine of the fourth category"; which, according to Section 23 point 4, is "€19,500" (nineteen thousand five hundred Euros), and when read in conjunction with Section 24c point 1 and 3 becomes:

> "If a fine has been imposed in a judgement and full payment or full recovery of the amount due does not follow, the court shall order enforcement of the default detention… The term of the default detention shall be a minimum of one day and a maximum of one year. A maximum of one day shall be imposed for each full € 25 of the fines."

This combination of penal sentence formulation looks similar to Indonesia's current condition, where the fine sentence is imposed in conjunction with its main penal sentence (imprisonment). It causes an alternative formulation that is lower than its main penal sentence. Thus, a maximum of four (4) years of imprisonment can be substituted with a maximum of one (1) year of detention sentence. This condition, it is argued, makes Judges hesitant to impose a fine sentence as an alternative to imprisonment for logical reasons, questioning the rationality of the formulation of a full four years of imprisonment, with an alternative €19,500 of a maximum fine, having an alternative/subsidiary of 1 year of detention. Furthermore, a maximum fine sentence of €19,500 for four years thus has a monthly equivalence value of €406.25 (€19,500/5 years/12 months), which can be seen as too low as compared to the perspective of the community who generally compare working legally in the least benefited condition. According to the Netherlands, the minimum wage for 2012, precisely on 30 June 2012, was €1,446.5/month, and on 5 February 2021 was €1,685/month.[3]

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[1] Indonesia Minimum Wage Rate 2021 In: *minimum-wage.org* [online]. [2021-04-01]. Available at: <https://www.minimum-wage.org/international/indonesia>.
[2] Criminal Code In: *European Judicial Training Network* [online]. 2014 [2023-06-26]. Available at: <https://www.ejtn.eu/PageFiles/6533/2014 seminars/Omsenie/WetboekvanStrafrecht_ENG_PV.pdf>.
[3] Netherlands Wages: Minimum And Average In: *take-profit.org* [online]. 2021 [2021-03-22]. Available at: <https://take-profit.org/en/statistics/minimum-wages/netherlands/>.

The Judge can justify that imposing a double-track sentence will nullify the maximum custodial sentence of 4 years in prison, which can be replaced with a lighter sanction: 1 year of detention if the fine is not paid. Even if a fine sentence is convicted, the convict is not likely to pay it. This perspective is based on a simple economic analysis which concludes that the detention sentence is more profitable than the fine sentences for categories 4 to 6 based on the Dutch's 2012 minimum wage (1 year = 12 months x €1,446.5/month = €17,358 < category four fine= €19,500).

A similar condition of inequality between prison and fine sentences is also found in the "2018 version of the US Sentencing Guidelines" (in the future abbreviated USSG 2018).[4] To reinforce the fact that there is no value equality, the table of fines in the 2018 USSG cited from the "US Sentencing Fines Table" is added with the minimum and maximum imprisonment, including maximum imprisonment for the highest "criminal history category", to be juxtaposed (put in a row) and searched for the value of the fine sentence per month. This results in a varied comparative value of the minimum-maximum imprisonment and fine, ranging from $221/ month, with the value of imprisonment at the highest offense level, up to $1,600/month. The condition varieties in the comparison between the imprisonments and the fine in the table reinforce that even in the United States Criminal Law with a fairly advanced concept, there is still no equivalence formulation between imprisonment and fines. Whereas based on the minimum wage in the United States in 2020 is $1,160 per month or $7.5/hour, the wage of a low-skilled worker is $1,960/month in 2018.[5]

Table 1. US Sentencing Fines Table with Maximum and Minimum serving in prison

Offense Level	Min prison (Months)	Max prison (Months)	A Minimum	B Maximum	Min Fine / M. Prison	Max Fine / M. Prison
3 and below	0	9	$ 200	$ 9,500	-	$ 1,055.56
4-5	0	15	$ 500	$ 9,500	-	$ 633.33
6-7	0	21	$ 1,000	$ 9,500	-	$ 452.38
8-9	0	27	$ 2,000	$ 20,000	-	$ 740.74
10-11	6	33	$ 4,000	$ 40,000	$ 666.67	$ 1,212.12
12-13	10	41	$ 5,500	$ 55,000	$ 550.00	$ 1,341.46
14-15	15	51	$ 7,500	$ 75,000	$ 500.00	$ 1,470.59
16-17	21	63	$ 10,000	$ 95,000	$ 476.19	$ 1,507.94
18-19	22	78	$ 10,000	$ 100,000	$ 454.55	$ 1,282.05
20-22	33	105	$ 15,000	$ 150,000	$ 454.55	$ 1,428.57
23-25	45	125	$ 20,000	$ 200,000	$ 444.44	$ 1,600.00
26-28	63	175	$ 25,000	$ 250,000	$ 396.83	$ 1,428.57
29-31	87	235	$ 30,000	$ 300,000	$ 344.83	$ 1,276.60
32-34	121	327	$ 35,000	$ 350,000	$ 289.26	$ 1,070.34
35-37	168	life	$ 40,000	$ 400,000	$ 238.10	-
35 - above	235	life	$ 50,000	$ 500,000	$ 212.77	-

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[4] PRYOR JR, W. H. et al. United States sentencing commission guidelines manual In: *ussc.gov* [online]. 2018 [2023-06-26]. Available at: < https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2018/GLMFull.pdf>.
[5] United States Wages: Minimum And Average In: *take-profit.org* [online]. 2021 [2021-03-22]. Available at: <https://take-profit.org/en/statistics/wages/united-states/>.

sentence is mostly indicated to have less amount, they are sentenced together; both the prison sentence and the fine sentence does not benefit either the state, representing the community, or the victim.

Given that the United Nations (UN) in 1990 issued the UN Standard Minimum Rules for Non-Custodial Measures or known as 'The Tokyo Rules' which states that effective non-custodial measures can reduce jail overcrowding[6]. Thus, it is important to find alternative sentences for criminal perpetrators and to provide possibilities for law enforcers to change the prison sentences into sentences taking into account the needs of the perpetrator's individualization by the criminal acts one has committed[7]. The proposed formulation of the equivalence of prison and fine sentences can answer what is sought in the 'The Tokyo Rules'.

2. RESEARCH METHOD

This study used a normative research method that examined existing legal sources and analysed them with an economic analysis of the law. To build a new concept that answers the weaknesses mentioned above, an eclectic approach was proposed; a philosophical approach that collected the best values for discussion – it can also be called John Rawls' 'reflective equilibrium' approach or the Pancasila-based deliberation approach,[8] originating from several theories such as the double track sentencing theory, John Rawls's theory of justice to find a minimum value reference that was fair for humanity, Aristotle's retributive theory of justice[9] and a utilitarian theory of "commensurable"; all can be calculated with money,[10] and based on restorative justice theory that prioritised the recovery of losses to victims and society.

3. RESULTS AND DISCUSSION

The double track system of the sentencing theory proposed by M. Sholehuddin views that the current state of modern criminal law, "the sanction system," did not only include penal [sentence] (*straf*/punishment), which acted as suffering but also acted as treatment (*maatregel*/treatment) which was relatively meant to be educative (in [] added by the writer).[11] The Netherlands also applied a similar policy, which is called two-track system or dualistic sanction.[12]

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[6] Commentary On The United Nations Standard Minimum Rules For Non-Custodial Measures In: *United Nations Digital Library* [online]. [2023-06-26]. Available at: <https://digitallibrary.un.org/record/105347>.

[7] Ibid.

[8] ATMAJA, G. M. W. Legal Pluralism Politics towards Recognition of Social Unity in Customary Law and Local Regulation. *International journal of social sciences and humanities*. 2018, Vol. 2, No. 2, pp. 124–140, [2023-06-27]. Available at: <https://www.sciencescholar.us/journal/index.php/ijssh/article/view/152>.

[9] ARISTOTLE et al. *The Nicomachean Ethics*. London: Penguin Books, 2004.

[10] BENTHAM, J. *An Introduction to the Principles of Morals and Legislation*. Glasglow: Good Press, 2021.

[11] SHOLEHUDDIN, M. *Sistem Sanksi Dalam Hukum Pidana – Ide Dasar Double Track System & Implementasinya*. Jakarta: Raja Grafindo Persada, 2007.

[12] SCHOTEL, B. Administrative Law as a Dual State. Authoritarian Elements of Administrative Law. *Hague Journal on the Rule of Law*. Vol. 13, No. 1, pp. 195–222, [2023-06-27]. Available at: <https://link.springer.com/10.1007/s40803-021-00156-4>.

Then, this theory implied that there will be a demand for equality in the value of penal sentences and treatments, demanding:

"equality in the stipulation, elaboration, and application of sanctions at all stages of the penal policy… so as to enable the utilisation of comprehensive, systematic, and proportional penal sentences and treatment sentences… the determination of a type of sanction must be equivalent to the act that is threatened or provisioned"

Based on this rationale, the conception of the formulation was built to seek prison sentence X having an equal value to fine sentence Y. It was necessary to search for a basic reference value so that this equivalence formula has a clear reference for formulating the value of prison sentence X compared to the value of fine sentence Y. In order to find the equivalence, the concept of commensurable, proposed by both Aristotle and Bentham, was used to change the form of prison sentence X into the Economic Value of Prison Sentence X.

Aristotle's theory also supported the theory of economic analysis of the law, which also originated from Ronald Coase's theory of law and economics. Both theories proposed a theory assessing law. Especially in this study, prison sentences were seen from the economic perspective of society, proposing a risk-benefit ratio to encourage the pursuit of equivalence between penal sentences and the conditions of other people who are free and work. The search for a reference value for community assessments of imprisonment was also supported by theories of justice, especially John Rawls's theory of justice.

It was proposed using the theory of economic analysis of the law to see the public's assessment of the value of prison sentences. The fine sentences already possessed a unit with economic value, so they did not need to be converted into economic values applied in the community. Hence, fine sentences were disclosed by the existing provisions. Referring to the requirements of a just system in John Rawls's theory of justice, the chosen referred value of the economic variables should be the value providing attention to members of society who fall under the category of inhumane living standard to be improved into the category of everyday living, implying a requirement of minimum limit to be just. [13] The guarantee of Rawls's humane treatment can be directly seen in his "Second Principle" of justice postulate point (a): "to the greatest benefit of the least advantaged", or the phrase "none should fall below a decent standard of life."[14] It can also be seen as Rawls's attempt to revive Jeremy Bentham's thought about the inviolability of personal rights (or personal rights that shall not be violated) as an effort to avoid inhumane treatment.[15]

As aforementioned, the explanation also referred to Rawls's explanation and development in this study, the value of the Decent Living Needs (Indonesian: *Kebutuhan Hidup Layak*, in the future abbreviated as DLN) was also worthy of being a good reference variable of economic value to seek the equivalence between prison sentences and fine sen-

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[13] TANYA, B. L., SIMANJUNTAK, Y. N., HAGE, Y. M. *Teori Hukum, Strategi Tertib Manusia Lintas Ruang Dan Generasi.* Yogyakarta: Genta Publishing, 2012.

[14] RAWLS, J. *A Theory of Justice.* Cambridge, Massachusetts: Harvard University Press, 2009.

[15] GUSTAFSSON, J. E. Bentham's Binary Form of Maximizing Utilitarianism. *British Journal for the History of Philosophy.* 2018, Vol. 26, No. 1, pp. 87–109, [2023-06-27]. Available at: <https://www.tandfonline.com/doi/full/10.1080/09608788.2017.1347558>.

tences. It was because it contained the equivalence of these two values, with variables containing the economic value compared to time (Rp (Indonesian Rupiah/IDR)/month). The equality between the two values illustrated the relativity of economic and time values prevailing in the area.

The formulation of this research problem has clear limitations. It was necessary to find an appropriate reference point representing the two parties of justice seekers: the perpetrators and the victims. If the value is too heavy, the convicted offender will choose to serve the prison sentence instead of trying their best to pay the fines: for example, one month was worth 1 billion Rupiahs. On the other hand, if the value is too light, the judge will not want to impose the fine along with its main penal prison sentence.

The choice of the economic variable used as a reference for justice referring to the DLN was re-examined to seek the simplicity of the message to the community. Considering that the economic variable in the form of Regional Minimum Wage (*Upah Minimum Regional*, in the future abbreviated as *UMR* or RMW) was a variable quite closely related to the DLN, namely the value of determining the RMW in a region based on Article 43 paragraph (1) of Government Regulation Number 78 of 2015 concerning Wages was to use DLN and "by paying attention to productivity and economic growth". In addition, RMW was also a variable containing two comparisons of value, namely the value of Rupiah per time, so that, just as DLN, RMW can be directly used to find equality between the value of fine sentences, which was assessed in money, and penal prison sentence which was assessed in time. RMW was also more clearly obtained because it was the product of legislation serving as a benchmark and reference value set by the Governor of each region based on Article 41 paragraph (1) Government Regulation Number 78 of 2015 about Wages stating that the value of DLN each region must be tracked in the provision of each region's regulation concerning wages, resulting in the RMW.

Based on the theory mentioned above and the rational choice theory, viewing humans as perfectly rational beings who are subject to economic logic, these two theories support that in order to direct society in the aimed direction with their depiction of rules provisioned to the community, the rules must be easily understood based on the prevailing economic rationale in the society. The use of economic formulas or variables that were read by the public will ease conveying these rules. Hence, this theory directs humans towards the direction targeted by the law, so the law must contain rules understood by humans instead of trying to create new rules. In general, the message delivered to humans shall maintain its simplicity with clarity of reward and punishment (positive and negative sanctions) required to establish the law capable of achieving its objectives.

Using economic variables referring to the Regional Minimum Wage was clearer than other economic variables that must be converted before being used as reference values. The choice of RMW was in line with the idea because ordinary people who read the rules provisioned in penal law directly imply equality between people serving prison sentences and other people working in free conditions. RMW, which described how much other people who work normally can earn in the most disadvantaged conditions, was considered suitable as the minimum reference value describing the equality for the least advantaged people as rational agents subjected to financial ratios. Consequently, when someone was in the lowest economic position, this equality was still relatively rational considering when the burden of the value of the prison sentence was equal to this. Thus,

it described someone who worked legally in the same period and earned the least equal to RMW value. It was equivalent to the value of people being forced to work in prison while serving the prison sentence, while still getting their freedom or were not prisoned.

Equality with the benchmark or basic reference value along with the RMW sent a sign that the perpetrator of a criminal offense within the same period will get the same value whether working legally in the most disadvantaged conditions earning the RMW salary, or getting the resources or benefits in advance by committing a criminal offense. Nevertheless, the penal law will further ensure that he has to pay back the number of profits he had previously received at the same time as he works in the most disadvantaged conditions aforementioned. Moreover, the convicted person in prison also suffers losses, including not being free to contact other family members, deciding his fate to try to increase his income (applying for a job elsewhere with a higher salary and better facilities), freely improving the quality of life while living in prison and many other social restrictions that shackle the convicted person. It encouraged the ratio of convicts to free themselves from penal prison sentences. As a result, when the penal law system provides all available space to reduce or eliminate the need to undergo prison sentence and provide options to pay in another way having equal value, the conditions were mutually beneficial as the state got the full refund of all losses arising from a criminal act, the convict does not need to undergo the heaviest sanction by serving a prison sentence (*ultimum remidium* for imprisonment).

It was necessary to understand that from the compiled research materials referring to sources of legal materials in the form of provincial and regional minimum wages and city and district regional minimum wages, it was found that the economic growth of each province or region appeared to fluctuate. Sometimes the growth in a region exceeded the provincial's average growth, but at other times, it grew less. Each region may differ in position based on the economic level or index of economic value. Below is a diagram of the increase in the Minimum Wage for Cities and Regencies used as proof that the economic condition of each region grew, and there was no visible correlation between the equations. The value of Antam's gold per gram was also included as a reference.

Table 2. Diagrams of the increasing Minimum Wages of 5 Cities in Surabaya, DKI Jakarta, Lampung, Magetan, dan Cirebon, compared to Antam's value in grams.
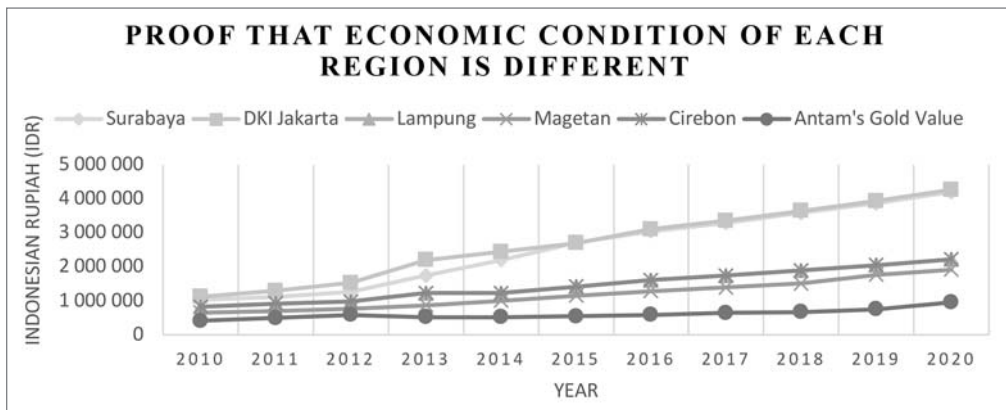
The amount in the table above was shown as effectively applied values around December of each year. The diagram above only selected five cities for ten years, from December 2010 to December 2020, due to limited media to convey the source of the legal material. It was limited by the grey colour chosen for this paper. The minimum wage amount was obtained from the Governor's Regulations of each region and in the issuance year period before the enactment of the amount.

The option not to use several options for processing the amount of minimum wage nationally or provincially was because this generalisation effort seemed to contradict the spirit of seeking justice which represented the balance between the victim and the perpetrator mentioned above. When using the minimum amount of minimum wage, either nationally or provincially, there will be several cities or regencies whose amount exceeds the reference value of the national minimum wage or the regional wage in each city/regency.

Suppose the condition was seen from the point of view of the value of the fine penal sentence. In that case, it will encourage the perpetrator to feel unfairly treated because of a heavier burden than the burden of other people in achieving the same economic value when working normally and is the potential to prolong the prison sentence. For example, for a loss of IDR10,000,000 with reference having less value below the local minimum wage, such as IDR4,000,000/month, which was equivalent to 2.5 months, but if the minimum wage reference value for the city or the smallest regency in the province, for example, was IDR1,500,000/month, then the penal sentence in prison is equivalent to 6.6667 months.

Whereas when seen from the perspective of equality with a focus on a penal prison sentence, it will be reversed as follows 2.5 months with a reference value of IDR4,000,000/month, the penalty is equivalent to IDR 10,000,000; but 2.5 months with a reference value of IDR1,500,000/month will be equivalent to the value of a fine of IDR3,750,000. Considering that the current application of penal law has only focused on penal prison sentences, then determining a reference value which is not too small is required to ensure proper equality to the penal sentences, or it will lead to the potential of fine sentences paid to the state will be less than the amount earned by other people working at the same time.

A short case representing this analysis on massive damage is an example of AG's case (abbreviated name) with case register number *1616 K/Pid.Sus/2013*. AG was sentenced to 12 years of prison and IDR 40,000,000,000.- (abbreviated IDR 40 billion) of fine, or a five-year sentence for the fine substitute if not fully paid. The argument here raises a question regarding two things, first how the judge determines the substitute of the IDR 40 billion fine with five years of prison, second, it is clear that the monthly wage of AG at that time was not even close to IDR 40,000,000,000 accumulated for the whole five years. If the IDR 40 billion is divided by IDR 2,500,000, it is a rounded-up number compared to the minimum wage of Jakarta in 2013 was IDR 2,200,000, equivalent to 16,000 (sixteen thousand) months or 1,333 (one thousand and three hundred thirty-three) years and four months. In this case, most people would choose five years of prison over paying the fine.

This research proposed using the Regional Minimum Wage in both the city and regency where the case occurred at the time of the incident as a basic reference value which was fair to both parties, the perpetrator on the one hand and the victim and the state on the

other. The good value showed the relative equality of economic value and time in an area with the relative economic value and time of people working in the most disadvantaged conditions to be treated equally. In the analysis of the Criminal Code, it was clear that the problem of the value of the fine penal sentences, until its correction in Perma No. 2 of 2012, showed a lack of attention of the legislative, executive, and judiciary in paying attention to the value of fine penal sentences. Besides that, judges seemed reluctant to impose fines in imposing penal sentences for criminal actions with alternative formulations. The conditions of the fine of penal sanctions in the Criminal Code and with its amendments in Perma No. 2 of 2012 were considered no longer relevant to be used as a fair reference.

From the statements above, the approach in this study was to adopt prison sentences and the systems adopted in the Criminal Code in assessing the weight of the mental attitude of the offender. Hence, this improvement proposal will focus on using prison sentences to find their equality with the fine sentences equivalent to the perspective of the economic value of society in general. The formulation of this improvement was not only on its use by the panel of judges but also on the use of values of maximum prison sentences, as well as the formulation of cumulative assessments in the criminal (*concursus*) provisions in the Criminal Code that will be used as a reference for assessing the value of the loss of the public and the state or those proposed as social loss variables represented by penal fine sentences.

Furthermore, throughout this research, a formulation was proposed that the value of a prison sentence X will have the equivalent of a fine sentence of IDR.Y, where the equivalent value of the two (2) values with different units was obtained from the use of the easily obtained economic variable, the Regional Minimum Wage with a value formula of IDR/time, either per month, per day, etc. just as the Minimum Wage formula in other countries such as in Japan,[16] South Korea[17] and the United States,[18] as well as in Law Number 11 of 2020 concerning Job Creation in economic value per hour. In other words, a definite equality was obtained between a prison sentence X equal to a fine sentence Y because no matter how the value of prison sentence X lasts, the obtained formula remained the same as Y divided by X is the equivalent of the RMW of the local Regency /City so that the formula also applied a fine Y = prison sentence X x RMW, and prison sentence X per month = a fine of Y/UMR per month. The two-way formulation was obtained from the formulation that the economic value of prison sentence X was the same as the value of the time length of prison sentence X in a certain time unit multiplied by the basic reference value, namely the RMW in the same time unit. This condition guarantees the mathematical formulation and the formulation of rules in law to be clear, definite, and applied in both ways, as described in the previous paragraph.

[16] Japan Minimum Wage, Labor Law, and Employment Data Sheet Japan Minimum Wage Rate 2020. In: *minimum-wage.org* [online]. [2020-11-25]. Available at: <https://www.minimum-wage.org/international/japan>.
[17] South Korea Minimum Wage, Labor Law, and Employment Data Sheet South Korea Minimum Wage Rate 2020. In: *minimum-wage.org* [online]. [2020-11-25]. Available at: <https://www.minimum-wage.org/international/south-korea>.
[18] United States Wages: Minimum And Average. In: *take-profit.org* [online]. [2021-03-22]. Available at: <https://take-profit.org/en/statistics/wages/united-states/>.

The formulation of equality of prison and fine sentences, the value of RMW describing the equality of values with other people working legally in the most disadvantaged conditions showed an equal state as well as promises an equal treatment at least collectively to be tested in the lowest limit which was still humane, that was when work was assessed per time with the RMW. Using the RMW reference value, which was rational, neither too much nor too less, encouraged judges to continue to mention it in the verdict as the value of a fine sentence which can be imposed as a substitute for the prison sentence since both are equal. The comparison of the fine to the prison sentences will remain the same as the base reference value of RMW. The public point of view of a fair prison sentence is assumed to have an economic value equal to that of other people working in the most disadvantaged conditions at the same time and place of occurrence. Therefore, people who serve in prison do not get a shorter amount of time than those who normally work in the most disadvantaged conditions.

Reviewing previous research, a direction to this idea seems undetected except for my paper with Gazalba Saleh. Hence, it is difficult to find related journals or law books discussing the equivalence of prison and fine sentences and attempts to explain the rationality of imposing a 1-year prison sentence on a perpetrator for certain criminal acts. This newly proposed formulation contradicts the formulation of sentences in the existing criminal law in Indonesia and several countries, such as the Netherlands and the United States, trying to pay attention to humanity and mitigate alternative penal sentences for criminal sentences. This study questions the rationality of this because it is contrary to the original purpose of criminal law in formulating prison and fine sentences or other sentences in the following discussion, which is financial such as compensation. The restriction weakens the enforcement or makes alternative penal sentences from custodial criminal sentences ineffective, making it not eligible for Judges to impose.

The imbalance between a prison sentence and a fine sentence, which is irrational and diminishing in several criminal law systems, either in Indonesia, the Netherlands or the United States, hinders the adoption of restorative justice-based criminal law application. However, "the development of National Law that leads to a restorative justice approach with measurable benefits for the community" is quoted from a focus group discussion (FGD) on Thursday, 1 December 2016, by the National Law Analysis & Evaluation Center of *BPHN,*[19] a similar view is also obtained from an international perspective, such as the UN Tokyo Rules, and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.[20] Without any effort to improve the formulation of fine sentences and alternative sentences to the fine sentences, and other non-custodial sentences, the efforts to find financing for restoring the situation of the victim and the community are doubted to be achieved.

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[19] ADJI, I. S. Pembangunan Hukum Nasional Yang Mengarah Pada Pendekatan Restorative Justice Dengan Indikator Yang Dapat Terukur Manfaatnya Bagi Masyarakat. In: *Sistem Hukum Pidana & Keadilan Restoratif.* Jakarta: Fakultas Hukum Universitas Indonesia, 2016, p. 10.
[20] General Assembly Resolution, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. In: *United Nations Human Right: Office of The High Commissioner* [online]. 29. 11. 1985 [2023-06-27]. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/VictimsOfCrimeAndAbuseOfPower.aspx>.

5. CONCLUSION

This research proposes an equivalent formulation of prison sentences and fine sentences with a mathematical formula using economic variables existing in each country, with the fulfilment of the rule that when the appropriate length of prison sentence is imposed on certain criminal activities and the perpetrator of certain conditions, the economic value of the prison sentence must be equal to the economic value of the fine sentence. Meanwhile, the economic value of a prison sentence is obtained by multiplying the duration of the prison sentence with the variable economic value of the RMW at the place and time of the incident. The weight of the prison sentence X will always be equivalent to the fine sentence Y and vice versa because the economic value of prison sentence X is equivalent to the fine sentence Y, always following the formulation of good sentence Y divided by the duration of prison sentence X is always the same as the RMW value during the time and place of the incident.

In this research, a two-way formulation between a prison sentence and a fine sentence is proposed allowing the fine sentence to be prioritised by the perpetrator to be selected to be paid. The judge agrees to formulate this two-way sentence because both are equal. When the imposed prison sentence is not fully paid, this formulation will return the perpetrator to a sentence equivalent. This equality of prison sentence and fine sentence will support the application of restorative justice in the Criminal Law system, which does not emphasise suffering or hurting the perpetrator. However, an effort to restore the state and victims' losses represent the community to be paid.