

DESIGNING A JUST, DEFINITE, DETERRENT, RESTORATIVE, AND RESPONSIVE CRIMINAL JUSTICE SYSTEM THROUGH SENTENCING ECONOMIC VALUE

Gazalba Saleh, Faculty of Law, Narotama University
Teng Junaidi Gunawan, Faculty of Law, Universitas 17 Agustus

ABSTRACT

Crucial to the rule of law and democracy in a country is its criminal justice system. Although criminal justice systems vary from one country to another, there is a shared view that without a strong, credible, and responsive criminal justice system there would be no justice what so ever. Many ways exist to make a criminal justice system more credible and responsive. One way is by investigating, prosecuting, and punishing criminals with just, fair, and deterrent sanctions for justice and economic growth. This is where the major problem is often found as there has not been so far a theory that provides an answer on how to calculate a just and fair criminal penalty. Criminal law sentencing guidelines in various countries tend to lack rational basis as they remain vague both in criteria and the weighting in comprehensible penal policies. The ambiguity includes the type of crime (Strafsoort), its severity (Strafmaat), and punishment (Strafmodus). Aimed at finding out why there is no deterrent effect in the Indonesian Criminal Justice System, this paper seeks to improve not only the Indonesian Criminal Justice system but also Indonesian Criminal Law in general. The paper also seeks to provide a philosophical theory and the application of Penal Sentence as Ultimum Remidium. The results indicate that the Indonesian Criminal Justice fails to create an environment whereby a crime does not profit its perpetrator. The results also show that lack of proportionality makes the criminal justice system not only look like gambling but also and more importantly lose credibility in the eyes of both the victims and the offenders, hence taking away the deterrent effect of sentencing.

Keywords: Criminal Justice Reform, Penal Code Reform, Restorative Justice, Sentencing Policy, Crime and Punishment, Economic Analysis of sentencing.

INTRODUCTION

No judicial system provides a clear theory on how to calculate a fair burden for a criminal penalty. As pointed out by John Kaplan, criminal sanctions in criminal law in various countries tend to be irrational. J.P. Peter on the other hand believes that CJS is the vagueness of criteria in penal policies. The ambiguity includes all criminal dimensions such as “*Strafsoort*” (criminal type), “*Strafmaat*” (the severity of the criminal), and its “*Strafmodus*” (penal form) (Sholehuddin, 2007). Even the Indonesian Penal Code or “*Kitab Undang-Undang Pidana*” (KUHP) does not provide any clear sentencing guidelines “*Straftoematingsleidraad*” except for the provisions of Article 55 and Article 56 of the Draft Penal Code or “*Rencana Undang Undang*”

Hukum Pidana” (RUU KUHP) of 2013. However, this sentencing guideline is just made of abstract provisions unable to give a clue on how to calculate the weight of sentencing. For example, how much the motive of a criminal act affects the weight of punishment?

These problems are also found in countries such as the United States of America where the United States Sentencing Commission (USSC) through Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984¹ has been trying to create a real-time (U.S. Sentencing Commission, 2011), and deterrent sentencing guidelines that would consider the question of how to build a system that could minimize the disparity, provide transparency, certainty, and accountability in sentencing. However, as reasonable as it might seem, the current US Sentencing Guideline remains controversial in the USA. After the 2005 decision of the US Supreme Court in the case *USA v. Booker*, and the 2004 Supreme Court decision in the case *Blakely v. Washington*, (U.S. Sentencing Commission, 2011), the Federal Sentencing Guideline is no longer acts as a compulsion, but rather just as a recommendation to the judges in imposing penal sanctions.

The common mistake often found in the Indonesian criminal sentencing guidelines is the lack of effort to find out why CJS lacks a deterrent aspect in ensuring fairness and justice for all. This is the major concern and focus of this paper. Unfortunately, this issue so crucial to the growth of the Indonesian economy has poorly been addressed by Indonesian legal scholars and legal practitioners. The lack of literature both in Indonesian and English on the subject proves this sad reality. Therefore, this paper proposes some solution to the issue as has T. J. Gunawan in his book entitled “*Konsep Pemidanaan Berbasis Nilai Kerugian Ekonomi*” and its Revised Edition (Gunawan, 2015 & 2018).

RESEARCH METHODS

This is a socio-normative study drawing on an eclectic approach to help find common ground in arguing and building a legal and policy framework to address the main issue of the study. The eclectic approach is aimed at finding common ground or equilibrium of values. This study relies on secondary data consisting of articles of the Indonesian Penal Code or “*Kitab Undang Undang Hukum Pidana*” (KUHP) and the Criminal Procedure Code or “*Kitab Undang Undang Hukum Acara Pidana*” (KUHAP).

RESULTS AND DISCUSSION

Disproportionality in Sentencing

Before beginning the discussion, it is important to note that the Indonesian penal code upholds the idea that crime does not reward/benefit its perpetrator under certain predicted conditions whereby the harm caused by the offense outweighs the profits made by the offender. Based on this principle alone, it is hard, if not impossible for the CJS to fully fulfil satisfy the victim's need for justice. This is based on simple logic, in many cases, especially where the losses suffered by the victim is greater than the punishment. A perfect illustration of this is the stealing of a 4 Billion Rupiah (about USD 290,497.00) Ferrari car. Is it fair to sentence the thief to only 5 years in prison? Which is the maximum allowed by the Indonesian Penal Code? The underlying question here is will the thief receive the same amount of money as the price of the

stolen car while working legally within 5 years? In such a case, the judges mostly never give the maximum sentence, not to mention the fact that the offender is likely to earn prison remission should they behave well in prison. In the Netherlands for example, the same crime is punished by a maximum imprisonment of 4 years or a fine of the fifth category.

In Indonesia, the average minimum wage per annual is estimated to Rp. 18.500.000 or US\$1,304 depending on the province. In Jakarta, the capital city, it is estimated to Rp.3,940,973/month (about USD 382) or Rp. 47,244,000/year (about \$3,330.4 USD/year). While in the Netherlands, is it estimated to US\$21,860/year? If we compare the economic value of maximum sentencing possible in each of these two countries by multiplying the annual minimum wage with the maximum jail sentence we can determine that in Indonesia, it is estimated to Rp. 92,502,000/year (about \$6,520 USD/year), Rp. 234,390,326/year (about \$16,521.5 USD/year) in Jakarta, while in the Netherlands: US\$87,440. In the United States of America, the sentencing guideline mentioned earlier specifies 360 months or 15 years jail term as the maximum sentence before life sentence with an average of \$15,080USD/year, and a 30-year economic sentence valued at USD 226,200/year, which is still lower than the USD 290,497 loss suffered by the victim of the above-mentioned hypothetical stolen car case.

What precedes shows that the average citizen in Indonesia, the Netherlands, and the USA makes less than USD 290,497/year, and so based on this reality, a question arises as to how can a criminal justice system ensure a deterrent effect when the penal law can be used as a shortcut to reward criminals with something they would normally not be able to get working a legit job? However, by no means do we suggest that criminal justice cannot be unjust to the perpetrator of a crime as well. The current Indonesian Criminal Justice System can be used by the defending party to ask for greater punishment. All of these conditions above are caused by the absence of a unanimous measuring scale to impose a proportionate punishment. It makes the criminal justice system not only look like gambling but also and more importantly lose credibility in the eyes of both the victim and the offender as would feel that there has been a disparity in the sentencing. Such a system would make the convicts feel like they are victims of an unjust and unfair system, hence taking away the deterrent effect of sentencing. This provides the foundation for reforming the penal law as pointed out by David Fogel who suggests the “*elasticity of sentencing*” or indeterminate sentencing used in the State of Illinois, which gives too much freedom to judges and parole officers (Conrad, P. & Rutkowski, 1976).

As described above, the Indonesian Criminal Justice System is sometimes considered too lenient (under criminalization) or too harsh (over-criminalization). This unjust or unfair condition raises the question as to how the criminal justice system can reduce or even eliminate the conflict between the perpetrator of a crime and its victim by finding a balanced, more humane, and proportionate sentencing system. There is a need for the criminal justice system to shift to a social contract whereby the perpetrator of a crime is bound to confined force labor to pay more than the loss suffered by the victim and the state (perpetrator of a crime that caused X losses must pay X++). In such a system, the jail sentence would be sought as the “*Ultimum Remidium*”, therefore emphasizing another type of punishment than jailing itself. It is the system known as restorative justice (The offender pays for the loss suffered by the victim(s) and the state).

Restorative Justice

Restorative justice is a system of justice that creates a platform whereby the perpetrator of a crime and its victim (s) to meet to discuss the crime as to what happened, who was harmed by the crime and how, and to create a consensus for what the offender can do to repair the harm from the offense. This may include an apology, amends, or money paid directly or indirectly by the offender to the victim as compensation for the wrongdoing/harm. This is usually aimed at preventing the offender from causing future harm. The emphasis on the restitution has been proven to be a better system as the Netherlands has been using it since 1983 with its Financial Penalties Act “*Wet wijziging boetestelsel financiële wetgeving (Boetewet)*” (Criminal Justice, 2017). The low number of inmates in the Netherlands proves the effectiveness of restorative justice. The number of inmates in the Netherlands is so low that they imported inmates from neighbouring countries such as Norwegian from 2016 to 2017 (Arduyan, 2016).

With restorative justice, sentencing shifts from being a burden on the state to become a way for the perpetrator, who is bonded in a social working contract, to pay for the harm/damage caused by their action. A criminal justice system whereby sentencing is a burden on the state offers no balancing condition to reverse the criminal act in society. Such a system is economically counterproductive to society as it puts more burdens on the state. Over criminalization (sentencing people more than is necessary) is costly to the state because with the liberty is being taken, the person will not work efficiently, which in such, will create an economic loss to the society as a whole. Sentencing is not just a burden on the state in some aspect; it is also beneficial to the state as it is cheaper and easier to put the inmates in a preconditioned environment that makes it harder for them to escape punishment. In such a harsh system, law enforcement is viewed by the offender as an adversary or even an enemy rather than a facilitator or an educator.

Under a restorative justice system, the burden on the government would be alleviated as it would create an alternative source of revenue stream if managed well. It would not only make inmates more productive and useful to society but it would provide for a more trustworthy criminal justice system regulated by more humane penal policies. Restorative justice is often associated with terms such as “*victim-oriented criminal justice*”, “*4 Generation of sentencing*”, and “*double or dual-track sentencing*” (Sholehuddin, 2007). The concept was built as an approach to “*business process reengineering*”, a criminal justice system that includes all the theories above and which claims that many variables are missing in the current criminal justice system. One most important variable that is missing is the loss suffered by the victim. Without the court's assessment of the victim's loss, in terms of value and price, no real indemnification can occur. Under such a circumstance, chances are the offender paid less than what the victim lost. How to evaluate the gradation of a criminal offense, should it only be assessed based on “*actus reus*” or “*mens rea?*” How about a small economic loss for petty offenses? These are questions that are often ignored in sentencing.

In recent years, the verdicts of some criminal cases have raised controversy among the Indonesian population. These include the stealing of 3 branches of a tree by an 80-year-old lady, the stealing of fruits by husband and wife because they were starving. All of them are penalized as roughly as the stealing of a motorcycle or a car. Needless to ask if this is just and fair. Restorative Justice, as the term indicates would restore this imbalance condition and the broken relationship between the perpetrator, the victim, and the state (Armour, 2012). A criminal

justice system that is balanced, restorative, just, and humane would look like the following (Figure 1).

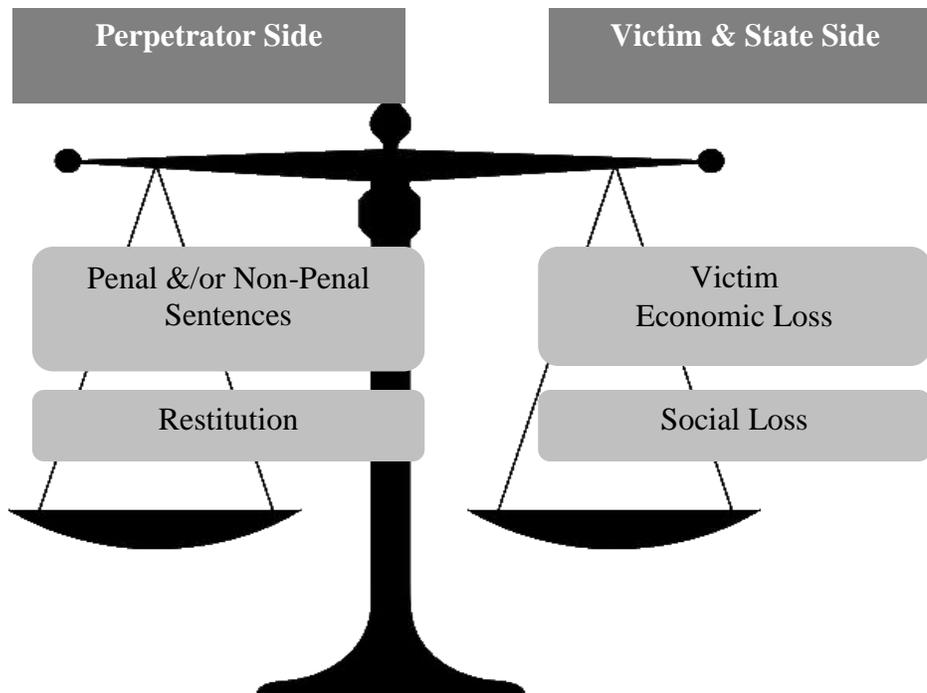


FIGURE 1
SCALE CONCEPT OF ECONOMIC LOSS VALUE-BASED SENTENCING.

To build such a scale one should ask what is being measured and how it is measured. The penal sentence or jail sentence is seen as “*what is being measured*” (capital penalties and the life sentence are out of this category as they are infinite). The answer to the question how the sentence is measured lies in the just and fair measurement of the weight of a sentence concerning the hypothetical question raised earlier which is whether it is fair to sentence criminal to pay less than the harm suffered by the victim and to allow the criminal to get away with a profit much more valuable than their annual income working a legitimate job. This emphasizes that a penal sentence must be at the minimum be equal to the value of what a person can earn while working legit in the same amount of time. It is worth noting that a fair, discrete, and “just deter” sentencing is important for criminal justice to achieve its objectives. Sentencing is the essence of criminal justice as it is aimed at restoring wrongdoing or injustice. But a just deterrent and balanced sentencing is the cornerstone of a successful and reliable criminal justice. The weight of sentencing is the actual deterrent effect that provides relief not only to the victim and the offender (special deterrence) but also to the society at large (general/global deterrence). The reason why a crime is reported is for the perpetrator to be held accountable before the law. But if the victim deems the sentencing unfair and unjust, they might lose confidence in the criminal justice system and take justice into their own hands, which would result in a ruthless fight with the alleged offender.

Importance of a Just, Fair, and Balanced Sentencing

One of the main purposes of criminal law is to hold criminals accountable for their crimes based on several concepts such as “*revenge, vindication, expiation, prevention, special deterrence, and global deterrence*”. Criminal sanctions must make it harder for criminals to benefit from their crimes. In other words, judges, through their verdict, must make sure that a crime does not benefit its perpetrator. They must strive to avoid disproportionality in sentencing. Without strong and balanced (proportionate) criminal sanctions, justice, and peace between the offender and the victim would be hardly achieved. A strong and proportionate sentence would provide more guarantees to both sides and increase their faith in the criminal justice system. This may not be the perfect system but it would, at least, allow for compromise, agreement, and forgiveness.

Using the regional minimum wage concept for the average people working a legitimate job in a certain period of time (monthly/yearly) as the measurement unit, the criminal justice system can ensure a fair representation of sentencing that reflects 8 hours (the official working time in Indonesia) combined with the loss of freedom. This technique would guarantee that crime does not benefit its perpetrator as it would create a situation whereby compensating for one’s crime (with a penal sentence) is costlier and more time consuming than working a legitimate job. This would create a balance and ensure that crime never rewards its perpetrator. This would teach a moral lesson as to it is always better to work a worse paying job than committing crimes.

The US Sentencing Guidelines, mentioned earlier, has, in recent years, shifted toward lessening jail terms. The life sentence has been reduced to 30 years with a federal minimum wage of USD 1.200/month. So, therefore, with such a minimum wage, a person working a legitimate job would make USD 432,000.00/year, which is the amount judges must keep in mind when sentencing this person should they commit a crime. A similar assessment is provided for within the Indonesian penal code, especially the draft penal code which has reduced life sentence and death penalty to 15-20 years with a regional minimum wage of Rp. 2,000,000.00/month (about \$ 142 USD/month or from Rp.360,000,000.00 (25,560.00 USD) to Rp.480,000,000.00 (\$34,080.00USD) /year.

However, one must keep in mind that the above measurement of sentencing does not apply to punishments such as life and capital punishments due to their complex and infinite nature. The application of these two types of punishment in criminal justice does not make room for possible repentance of the inmate. This inhumane sentencing gives the impression that the criminal justice system shows no mercy to the offender after they have crossed a certain threshold. This not only makes the convicted hopeless and desperate.

The sentencing measurement discussed above relies on the Economic Analysis of legal theories championed by Gary Becker (1968), and Willem Boger (1905) & Prakoso (2013). The focus here is that most of the criminal acts are economically motivated; therefore, it makes sense to use economic values in weighting the severity of a criminal act. With such an assessment, it is fair to argue that a penal sentence should correlate with the severity of the economic losses of the victim.

Theories of Crime Punishment

In punishing crimes, judges usually bear in mind two theories of sentencing: retributive theories of punishment and relative theory.

Retributive Theories of Punishment

Retributive theories of punishment (championed by Emmanuel Kant) emphasizes the need to make the offender pay a price commensurable to the crime they have committed, it is a sort of an eye for an eye justice or the law of retaliation (Latin: *lex talionis*) based on the principle that a person who has injured another person is to be penalized to a similar degree by the injured party. Retributive theories of punishment are also known as absolute theories. The theory places careful emphasis on taking care not to confuse retribution with vengeance, claiming that retribution is an enlightened attempt to restore imbalances caused by criminal misconduct, while vengeance is simply seeking revenge in a personal or private capacity. This theory claims that retribution is the essential characteristic of punishment, and so sees no point in justifying a means by its ends. Still, it generally takes an offender's track record into account.

The Utilitarian Theories of Punishment

The Utilitarian Theories of Punishment or Relative Theories (promoted by Jeremy Bentham), on the other hand, advocates that penal law should be more humane in punishing the offender and more educational to the society at large, rather than inflicting a harsh and cruel punishment that can be economically counter-productive to the state and society. Utilitarian, or relative theories of punishment, are divided into three different groups: prevention, deterrence, and reformation. These theories are often associated with extreme punishments such as capital punishment or castration. Preventative punishment is imposed to prevent the occurrence of further crimes. Deterrent theories are those that claim that punishment should deter the future perpetration of a crime. The reformatory approach to punishment serves to eliminate the possibility of warped sentences being imposed on offenders who do not deserve them. Instead of jail cells being filled with minor-offenders, this approach takes a social approach by having offenders do community service.

Jeremy Bentham coined the relative sentencing theory as an effort to treat the perpetrator's mental sickness as Bentham believes that criminals suffer mental illness to which the criminal justice should provide remedies. The relative theory of punishment is about deterrence and the humane treatment of criminals.

The Combined Theory of punishment

Since each of the theories discussed above have both positive and negative impacts on the Indonesian Criminal Justice System, it would be beneficial to combine their strengths into a unified theory of punishment. This combination of theories would provide for those aspects of punishment that are best suited to the interests of the society, the offender, and the nature of the crime. This has proven to be the best approach in terms of South African criminal law. However, we believe that without identifying the profit of the crime itself any attempt of remedying the perpetrator's mental illness will not work as there will be no deterrent effect if the criminal

justice system does not make sure that a crime does not profit its perpetrator as argues earlier. Both relative and retributive sentencing theories are interdependent and cannot effectively work without a proper assessment of the economic loss suffered by the victim or the state. The result of the unification of these two theories must be one of the main purposes of criminal justice. It is intended to address the question as to why and how punishment is imposed.

Aristotle, in his corrective justice, argues that to restore both parties to equality, a judge must take the amount that is greater than the equal that the offender possesses and give that part to the victim so that both have no more and no less than the equal. Similarly, Jeremy Bentham, on the weight or burden of sentencing, argues that the value of the punishment must not be, in any case, less than what is sufficient to outweigh that of the profit of the offense (Tunick, 1992). Considering that what the offender possesses derives from the crime, it is clear that Aristotle's position above is more accurate in portraying what is required in weighing the punishment.

Adopting Economic Value in Sentencing Indonesia

The current Indonesia Criminal Justice System tends to favour relative sentencing theory, which weighs punishment only based on "*mens rea*". This is one of the reasons why sentencing hardly has a deterrent effect on criminals in Indonesia. It is possible to convert, to a degree mutually acceptable (by using the equilibrium of values) the weight of "*mens rea*" into economic values as the amount of money the state requires to deal with the crime committed. This is referred to as the social loss of economic value (Social Loss EV). If all the weight of sentencing is measured by its Economic Value (EV) then it may be described as 'Sentencing Economic Value' shown in the following illustration (This concept is only a model for a crime committed by 1 individual and which only affects 1 victim):

1. Sentencing Economic Value \geq Victim's Loss Economic Value;
2. Sentencing Economic Value = Victim's Loss Economic Value + Social Loss Economic Value.

Although we side with many of the Indonesian prominent criminal law scholars including Nawawi (2011), who firmly believe that not all victim losses can be economically identified or measured and that achieving real justice is beyond any human institution, we think that proportionality and equilibrium in punishment can be obtained in the establishment of a deterrent criminal justice system in Indonesia. This is why the concept put forward in this study relies on the equilibrium of values as a mediating way of finding common values among all theories. This concept reflects the Indonesian ideology of Pancasila that emphasizes the value of finding common ground. We believe that people can accept common values as long they bear minimal justice.

Although the conversion of economic value may not achieve true justice, it can help demonstrate what the victim has suffered. Such an approach is used in other fields such as insurance whereby a variable referred to as Human Life Values (Mease, 2008) in life insurance needs is used to calculate the losses caused by premature death. This can be explained in the following mathematical formula:

$$\text{Sentencing Economic Value} = \text{Penal Sentence Economic Value} + \text{Non-Penal Sentence Economic Value} + \text{Restitution.}$$

This concept provides a rational way of determining the source and amount of money the state must allocate to the victim of a crime. The Victim Economic Loss Variable makes a huge difference in the criminal justice system as it lays down the foundation of how much money the perpetrator must directly pay to the victim or the state through money earned working inside the penitentiary while serving their time.

However, should the offender fail to compensate the victim, the mathematic equation provided above would ensure that justice is still served as it gives a framework that estimates the exact amount of money lost by the victim and allows the state to pay for it through tax cut or a victim restoration or restitution program organized by the government while still forcing the offender to work in incarceration to make up for the payment. As emphasized throughout this study, such a system is beneficial to the victim, the offender, the state, and society as a whole. Although this idea is new to Indonesia, it is important to note that it has long been practiced in countries such as the Netherlands and South Africa. As the year 1983, the Netherlands has shifted its criminal justice policy toward financial penalties through “*Wet wijziging boetestelsel financiële wetgeving (Boetewet)*” Act, which has dramatically changed the criminal law of the Netherlands. Under this new policy, penal mediation and the use of fines are preferable to imprisonment. The system allows prosecutors to implement a transactional system with the perpetrator during criminal proceedings. This allows prosecutors to replace the criminal sanction of the perpetrator with a fine, as long as the crime is punishable with a maximum sanction of less than 6 years. The payment of this fine may also include payment of compensation to the victim. (Mease, 2008) With the existence of so many non-penal Sentencing, such as treatments, re-integrative shaming sentence, and other administrative sentences such as permit revocation, rights deprivation, sequel civil lawsuits, etc. These offer a wide range of options to prosecutors to guarantee proportionality in sentencing.

In the light of what has been argued above, we believe that Penal Sentence Economic Value per time should be equal to the economic variable referred to earlier as the Minimum Regional Wage per time illustrated by the following formulas:

$$\text{Penal Sentence Economic Value} = \text{Penal Sentence (per month)} \times \text{Minimum Regional Wage / month.}$$

Thus, the complete mathematic equation of this concept can be formulated as follows:

$$\text{Sentencing Economic Value} = \text{Penal Sentence Economic Value} + \text{Non-Penal Sentence Economic Value} + \text{Restitution}$$

$$\text{If Sentencing Economic Value} = \text{Victim's Loss Economic Value} + \text{Social Loss Economic Value,}$$

Then,

$$\text{Penal Sentence Economic Value} + \text{Non-Penal Sentence Economic Value} + \text{Restitution} = \text{Victim Loss in Economic Value} + \text{Social Loss Economic Value.}$$

Because Non-Penal Sentence Economic Value is usually zero (0), Penal Sentence Economic Value + 0 + Restitution = Victim's Loss Economic Value + Social Loss Economic Value, and

$$\text{Penal Sentence Economic Value} = \text{Victim Loss Economic Value} + \text{Social Loss Economic Value} - \text{Restitution.}$$

And if

$$\text{Penal Sentence Economic Value} = \text{Penal Sentence} \times \text{Minimum Regional Wage}$$

Then

$$\text{Penal Sentence} \times \text{Minimum Regional Wage} = \text{Victim Loss EV} + \text{Social Loss EV} - \text{Restitution}$$

Based on what precedes, the Concept of Economic Loss Value-Based Sentencing can be formulated as follows:

$$\text{Penal Sentence} = \frac{\text{Victim Loss EV} + \text{Social Loss EV} - \text{Restitution (in Month)}}{\text{Minimum Regional Wage (/month)}}$$

In addition, to improve fairness in sentencing, the above formulas are drawn on the *Balanced Scorecard* principle, which uses *Key Performance Indicators* (KPI) to mathematically measure the weight of Social Loss. KPI is the concept used in business to change the mission and vision of the company into a valued number of milestones that can be measured numerically and systematically so that the company can assess its overall performance. KPI can be used by judges to measure the weight of the offender's "*mens rea*" for a more transparent, just, and accountable sentencing. The Social Loss Economic Value variable should not be too great or too weak to allow the perpetrator to pay for the State Loss. This is pointed out by Tom Gash (2016) who argues that small decisions such as simply increasing the risk of the criminal being caught is what prevents many crimes from rising (Gash, 2016). He believes that criminals consider the cost-benefit ratio of a crime i.e., the risk of being caught before committing it. He emphasizes this approach is more efficient than increasing the criminal sentence. Due to this policy motorcycle theft in Germany dropped to 2/3 in a 6-year period in the early 1980s due to strict traffic rules, the decrease in railway theft thanks to a rule forbidding the purchase of metallic objects in cash but through bank transfer to either disclose the identity of the seller or to cancel the purchase should the good be declared as stolen. Decline in vehicle theft to 1/2 (half) due to the introduction of the immobilizer technology and so on.

Taking into consideration both approaches: the economic value of sentencing oriented toward deterrence and Gash's idea of crime prevention by increasing the risk of the criminal being caught can be the foundation of an ideal criminal justice policy in Indonesia. But this is no cure-all recipe. No matter how good criminal justice is, it will never ensure a crime-free environment as acknowledged by Tom Gash himself. From a religious viewpoint, it is believed that human beings are imperfect creatures, and it is this imperfect nature that leads us to making mistakes.

CONCLUSION

To conclude, this paper invoked an old and lost philosophically maxim that says that crime does not pay/benefit its perpetrator. Therefore, restructuring and combining the sentencing theories to make sure that the perpetrator pays for the loss suffered by the victim and the society. This proposal challenges some existing aspects of the Indonesian Criminal Justice such as the limit of maximum penal code sentences. While creating a system that is eclectic of all theories in

Criminal Law, a combined holistic approach that balances the economic losses of the perpetrator, the victim, and the state, and that uses penal sentences as “*Ultimum Remidium*” intended for a just, humane, and economically effective treatment of the offender.

CORRESPONDING AUTHOR

Dr. Gazalba Saleh, Department of Criminal Law, Faculty of Law, Narotama University,
Surabaya, Indonesia.

Office Address: Klampis Ngasem, Sukolilo, Surabaya City, East Java 60117, Indonesia

E-mail: gazalbasaleh@yahoo.com

ENDNOTE

1. Visit https://en.wikipedia.org/wiki/United_States_Sentencing_Commission

REFERENCES

- Ardyan, M. (2016). *Many prison cells are empty: The Netherlands imports criminals from Norway*. Retrieved from <https://www.merdeka.com/dunia/banyak-sel-penjara-kosong-belanda-impor-penjahat-dari-norwegia.html>
- Armour, M. (2012). Restorative justice: Some facts and history. *Tikkun*, 27(1), 25–65.
- Conrad, P. & Rutkowski. (1976). Fogel's justice model: Stop trying to reform. Punish, but treat all alike. *Illinois Issues*, 2(2), 1-11.
- Criminal Justice. (2017). *Criminal justice system of the Netherlands*. Retrieved from https://en.wikipedia.org/wiki/Criminal_justice_system_of_the_Netherlands
- Gash, T. (2016). *Criminal: The truth about why people do bad things*. Penguin Books, London.
- Gunawan, T.J. (2015). *The concept of criminalization based on the value of economic losses*. Jogjakarta: Genta Publishing.
- Gunawan, T.J. (2018). *The concept of criminalization based on the value of economic losses*. Revised Edition, Jakarta: Kencana Publishing.
- Mease, F. (2008). *Human life value-What's your economic worth?* Retrieved from <http://1stquote.com/blog/2008/02/human-life-value-whats-your-economic-worth/>
- Nawawi, A. B. (2011). *Interest of criminal law policies: Development of the concept of the New Criminal Code*. Kencana, Jakarta.
- Prakoso, A. (2013). *Criminology & criminal law*. Yogyakarta: Laksbang Grafika.
- Sholehuddin, M. (2007). *Penalty system in criminal law*. Jakarta: Raja Grafindo Persada.
- Sholehuddin, M. (2007). *Sanction system in criminal law*. Jakarta: Grafindo Persada.
- Tunick, M. (1992). *Punishment theory and practice: UC press e-books collection*. Retrieved from <http://publishing.cdlib.org/ucpressebooks/view?docId=ft4q2nb3dn&chunk.id=d0e2447&toc.depth=1&toc.id=d0e2430&brand=ucpress>
- U.S. Sentencing Commission. (2011). *An overview of the United States sentencing commission, 5 January*. Retrieved from https://isb.uscc.gov/files/USSC_Overview.pdf