NONEQUIVALENCE BETWEEN IMPRISONMENT AND FINES IN UNITED STATES SENTENCING GUIDELINES

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ABSTRACT

Objective: Seeking rational uniformity and proportionality of sentencing in United States Sentencing Guidelines. The United States has been establishing and updating its sentencing guidelines and structure based on the Sentencing Reform Act since 1984, aiming to improve the ability of the criminal justice system to fight crimes through an effective and fair sentencing system. Thus the objective here is to evaluate whether that aim has been met.

Method: Through normative research, the economic analysis of law was utilized to study the sentencing in the 2021 United States Sentencing Guidelines and its manual, especially comparing imprisonment and fine sentences. At the same time, comparing the imprisonment sentence and the fine sentence as the imprisonment alternative with the help of local economic variables, the minimum wage. The differentiation between the fine sentence or fines and its imprisonment alternative is calculated for each statute in the US Sentencing Fine, especially under §5E1.2.(c). (3). - Fines for Individual Defendants' Fine Table, and combining it with the minimum and maximum values in Sentencing Table in §5A to find the differentiation value or reference value or each row to analyse if any pattern emerged. Then compare it with the second objective, the United States's national minimum wage is used to calculate the minimum and maximum imprisonment statute to calculate the amount of money a normal person working legally in the worst condition, paid in the minimum wage, can collect in the same length amount of time.

Results: This research shows that: a) there is no equivalence between imprisonment and a fine sentence in the United States Sentencing Guidelines, and b) imprisonment has lesser economic value than its alternative sentence. Both findings are against the purpose of seeking rational uniformity and proportionality of sentencing. The nonequivalence above demonstrates the structure and guidelines of the United States sentencing system, which have several excellences compared to the sentencing system of other countries, such as Indonesia's prior Penal Code Book. However, the United States sentencing system is also flawed, which needs improvements in applying economic analysis and efforts to fix the flaws.

Keywords: criminal justice system reform, double track sentencing system, economic analysis of law, penal policy, US sentencing guidelines.

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NÃO EQUIVALÊNCIA ENTRE PRISÃO E MULTAS NAS DIRETRIZES DE SENTENÇA DOS ESTADOS UNIDOS

RESUMO

Objetivo: Buscar uniformidade racional e proporcionalidade de sentenças nas Diretrizes de Penas dos Estados Unidos. Os Estados Unidos têm vindo a estabelecer e a atualizar as suas diretrizes e estrutura de sentenças com base na Lei de Reforma das Sentenças desde 1984, com o objetivo de melhorar a capacidade do sistema de justiça criminal para combater crimes através de um sistema de sentenças eficaz e justo. Assim, o objetivo aqui é avaliar se esse objetivo foi alcançado.

Método: Por meio de pesquisa normativa, utilizou-se a análise econômica do direito para estudar as sentenças das Diretrizes de Penas dos Estados Unidos de 2021 e seu manual, comparando especialmente penas de prisão e multa. Ao mesmo tempo, comparando a pena de prisão e a pena de multa como alternativa de prisão com o auxílio de variáveis econômicas locais, o salário mínimo. A diferenciação entre a pena ou multas de multa e sua alternativa de prisão é calculada para cada estatuto da Multa de Sentença dos EUA, especialmente sob §5E1.2.(c). (3). - Tabela de Multas para Réus Individuais, e combiná-la com os valores mínimo e máximo da Tabela de Penas no §5A para encontrar o valor de diferenciação ou valor de referência ou cada linha para analisar se algum padrão surgiu. Em seguida, compare-o com o segundo objetivo, o salário mínimo nacional dos Estados Unidos é usado para calcular o estatuto de prisão mínimo e máximo para calcular a quantidade de dinheiro que uma pessoa normal trabalhando legalmente nas piores condições, paga no salário mínimo, pode receber no mesmo período de tempo.

Resultados: Esta pesquisa mostra que: a) não há equivalência entre prisão e pena de multa nas Diretrizes de Penas dos Estados Unidos, e b) a prisão tem menor valor econômico do que sua pena alternativa. Ambas as conclusões vão contra o propósito de buscar a uniformidade racional e a proporcionalidade das sentenças. A não equivalência acima demonstra a estrutura e as diretrizes do sistema de sentenças dos Estados Unidos, que apresentam diversas excelências em comparação com o sistema de sentenças de outros países, como o anterior Livro do Código Penal da Indonésia. No entanto, o sistema de sentenças dos Estados Unidos também apresenta falhas, o que necessita de melhorias na aplicação da análise económica e de esforços para corrigir as falhas.

Palavras-chave: reforma do sistema de justiça criminal, sistema de sentença dupla, análise econômica do direito, política penal, diretrizes de condenação dos EUA.

1 INTRODUCTION

The United States established the US Sentencing Commission (USSC) as an independent agency of the judicial division of the United States federal government which is responsible for establishing, amending, and promulgating sentencing guidelines for United States federal courts. USSC aspiration by Jack Kress and his research team in the late 1970s[1] proceed the argumentation of the justice model by David Fogel in 1975[2] and the theory "Just Deserts"[3]. There are several purposes of doing punishment with such basics, including to secure obedience to laws, to gratify feelings of revenge, to satisfy a public demand for severe reprisals for outrageous crimes, because they believed a deity

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demands punishment, to match with suffering the moral evil inherent in the perpetration of a crime[4].

Proportionate sentencing; in essence, is designed to limit unfair or unjust sentencing outcomes. The notion of 'just deserts' captures the idea that the sanction-imposed ought to reflect the degree of moral reprehensible-ness of the offender's wrongdoing[5]. It follows that the criminal who is to be deprived of his gain should be deprived only to the degree that such deprivation is merited with its blame worthiness. Accordingly, providing criminals their "just deserts" requires recourse to the principle of "commensurate" deserts[6], which points to the formulation: "severity of punishment should be commensurate with the seriousness of the wrong"[7]. In determining the seriousness of the wrong, adherents of the just deserts theory seek to make use of offense severity assessment in conjunction with analyses of the importance of societal interests protected by particular criminal statutes[8]. As also suggested by Beccaria (in Focault, 1995), "the penalty must be made to conform as closely as possible to the nature of the offence, so that fear of punishment diverts the mind from the road along which the prospect of an advantageous crime was leading it"[9].

Formulating a just deserts penal or criminal sentence is an ongoing discourse rarely discussed within the legal community and studies. The theory of the retributive purpose of sentencing, with its emphasis on "Just Deserts", hence is argued, has far been unable to offer a rational formulation for the appropriate sentencing weight. One study regarding this was the study of the sentencing system in Illinois in 1975 that shows this problem in sentencing.

Given that the judges' discretion in Illinois uses the indeterminate sentencing system to determine the punishment for the defendants and that the authorized officials have broad discretion to determine whether to grant parole, thus, Fogel's Justice Model demands standard justice through a firm and transparent sentencing. The current system's weakness is either a noticeable difference in the penalty for two or more offences with almost equal losses or the same punishment for crimes with significantly different losses. The further consequence that might arise is uncertainty for justice seekers regarding the amount of appropriate and fair sentencing[10].

The irrationality surrounding the penal sentence; or also called criminal sentence, is still quite evident in the author's home nation of Indonesia. Particularly when analyzing the current Indonesia Penal Code Book treats based on the Law of the Republic of

Indonesia Number 1 of 1946 concerning the Penal Law Regulation. One example of it is in current Indonesia Penal Code Book Article 362 – *delik pencurian* (theft article), which the fine sentence formulation was amended by Article 3 of Supreme Court Ruling Number 2 of 2012 (*Peraturan Mahkamah Agung* or abbreviated as *PERMA No 2 Tahun 2012*), in conjunction with Article 30 Paragraph (5) & (6) current Indonesia Penal Code Book; thus, the sentencing formulation is threatened by "maximum imprisonment of five [(5)] year, or a maximum fine sentence of nine hundred thousand rupiah [(Rp. 900,000)] with a six [(6)] months default detention to the fine" (under [] is added by the writer)[11]. This irrationality in Indonesia's penal sentencing also drives to find other similar condition in other country, which in this research is looking into United States Sentencing system in United States Sentencing Commission Guidelines Manual.

On the other hand, one of the dominant theories of sentencing; the rehabilitative sentencing, also affects modern crimes[12]. The rehabilitative sentencing purpose theory explains that the punishment purpose is to treat the behaviors of the perpetrators. This influence is proven by the existence of the double track system theory. The sentencing theory of the double track system or the dual track system, was first proposed by Carl Stooss, who named the proposed of sentence system as "*Zweisprachigkeit*" (1893)[13]. The double track system not only applies penal sanctions or sentences in the form of physical punishment; particularly imprisonment, but also applies treatment sanction[14]. This theory demands equivalence in the value of the penal sanction and the treatment sanction so as to demand: "Equivalence in the establishment, promulgation, and imposition of sanctions at all stages of the penal policy… thus enabling the utilization of penal sanction and treatment sanction for comprehensive, systematic, and proportional… the establishment of a type of sanction must be equivalent with threatened or charged evil deed"[15].

The criminal law system applying the double track system of sentencing theory is implemented in various countries such as Indonesia, the Netherlands, and also the United States. Essentially, the double track system requires an equivalent position between the penal sanction aimed at providing punishment and the treatment sanction aimed at rehabilitating the convicted[16]. Adopting an alternative sanction threat model, particularly the formulation of maximum sentence threat, which describes certain imprisonment sanctions with certain fine sentence alternatives, can demonstrate the existence and application of this theory in a specific criminal justice system or penal law.

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Unfortunately, the idea of a double-track system of sentencing theory is often violated both in its formulation and implementation, especially in Indonesia's current Penal Code Book. Thus, causing the purpose of penal law, or criminal law/criminal justice system, to seek rational uniformity and proportionality in sentencing cannot be reached. The failure towards the implementation formulation of the double track sentencing system theory (also called as "double track system" of sentencing theory by M. Sholehuddin) can be seen by the nonequivalence between the value of imprisonment and fine sentence, especially when reviewing the formulation of the threat of sanction in Indonesia[17], and; in this journal, United States Sentencing Guidelines.

This journal focuses on discussing the nonequivalence between the value of imprisonment and fine sentence in a specific crime against property in the United States, specifically the United States Sentencing Guidelines 2021. It should be emphasized that this study separates civil liability punishment by the court, so that in this case the criminal and civil; or tort, sanctions are not combined. This underlining is intended to avoid ambiguity that may occur in relation to criminal liability or accountability in America, which is not only seen from a criminal justice liability perspective, but also from a civil or tort law perspective[18]. This generally happens to fines or fine sentence. Fines is actually in the area of criminal law, but can be included in the non-criminal area when the victim wants financial compensation for injury or loss from non-criminal act committed by the defendant.

This study only emphasizes on the criminal justice or criminal law aspect, because when involving tort law aspect can cause difficulties in calculating the total value liability to the defendant against combination of criminal sanctions; or sentence, and civil sanction with its immaterial loss claim.

2 THEORETICAL FRAMEWORK

Herbert L. Packer stated that "the problems about punishment that are posed for resolution in a highly developed legal system such as ours do not, even in their definitional aspect, yield readily to any such simplistic exercise"[19]. Thus, providing a criminal definition itself is a complicated matter. Moreover, the primary moral principle (is) that the state, even as it punishes, must treat its citizens in a manner consistent with their intrinsic worth as human beings – a punishment must not be so severe as to be degrading to human dignity[20]. Barda Nawawi Arief conveys Kaplan's statement such as

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follows "The available sanctions for different evil deeds, without a rational basis at all", "The different sanctions are often only a reflection of slight differences which are not crucial"[21].

This research focuses on one of the crucial problems which is in determining whether in the criminal justice system the being studied existed the formulation of criminal sentences in the modern realm in which can describe or determine the value of a specific fine sentence (y value of fines) for a specific penal or prison sentence (x length of prison); that was the alternative of that prison sentence / imprisonment to begin with. Thus, it might be able; in the future research, to determine the economic value of a specific length of prison sentence which might be able to weight the proportion of the sentencing compared to the damages caused by the crime.

An economic assessment of imprisonment is argued using the economic assessment of the community in assessing the minimum losses incurred as a result of the imprisonment. It is an assessment that will equate imprisonment with the economic value obtained by someone working in the most disadvantaged circumstances simultaneously per month. With this argument, the public's commonly accepted assessment of the perpetrator's losses while in prison is equivalent to the economic value obtained by any community member who works legally in the most disadvantaged conditions.

The preceding issues are fundamental and significant in criminal law or penal law. Even though when the maximum threat of sentencing has been established, without a clear and rational formulation in formulating an imprisonment sentence or another criminal/penal sentence, including treatment sanctions that are not equitable with the criminal act. This indicates that the sentencing needs more clarity and rationality. Therefore, such a sentencing system in criminal law is undoubtedly unfair, irrational, and non-proportionate to uphold justice.

However, before determining the equivalence between imprisonment and the damages the criminal act caused, it is important to find a formulation to determine the economic value of imprisonment. This effort is also in line with the effort to formulate a specific fine sentence, which is in economic value, for a specific imprisonment which is the alternative or subsided to the imprisonment. As is done in this paper, an effort to find the current formulation on how the lawmakers, in this case, the United States Sentencing Commission, formulated the fine sentences for the alternative of specific imprisonment has been made in this paper.

To find the formulation, the differentiation between some sets of imprisonment sentence and their fine sentence alternative is calculated to find a certain set or reference value that represent the comparison between the fine sentence compared to its imprisonment or if any pattern emerged in consecutive sequences differentiation; or the pattern of changes between two sets of information under observation, between some sets of imprisonment sentence and its fine sentence alternative. This study calculates the reference value or the value of a fine sentence divided by the length of imprisonment. Then it evaluates whether the calculated value has any pattern, such as constant, ascending or descending in a straight line or a curved pattern.

Hence, the research to find the rationality of the sentencing system and sentencing statutes is very important to show the rationality of the sentencing system. It is also important to compare it to the economic condition of the common people at that time to ensure the sentencing is just according to society's point of view, or at least from their economic perspective of justice.

3 METHODOLOGY

The methodology for this paper is a normative legal research method. Scientific research procedures in this type of research method are used to find the truth based on available legal scientific logic obtained from the normative side. On of the approach used in this journal is the "Economic Analysis of Law". The "Economic Analysis of Law" has a tendency toward a principle which analyze the legal world using economic analysis, economic values, or theories to cast or predict doubts in legal reality, and often seeks reform of legal reality through examination of people's economic rationality[22].

This study compares the imprisonment and fines; as the alternative to imprisonment by combining the legal resources of the offence level, the minimum fines, and the maximum fines in US Sentencing Fine for Individual Defendants under §5E1.2.(c).(3)., with the minimum and maximum values in the Sentencing Table in §5A, calculating the differentiation or the ration between the fine sentence and its incarceration alternative, and then calculating the common people perceived value of time for the minimum and the maximum imprisonment sentence by comparing it with the same amount of money can be acquired in the same time length while working legally in the worst condition possible. This enables to calculate the differentiation or the ration; or as what in this paper is also referred to as the reference value, between the fine sentence and

its imprisonment alternative to determine the possibility of a pattern in imprisonment and fines, or each row to assess to see if any patterns appeared.

4 RESULTS AND DISCUSSION

The influence of the determinate sentencing justice system on the structure of the United States Sentencing Guidelines 2021 (USSG) is clearly visible. The determinate sentencing system is a theory of the criminal justice sentencing system in which the threat of penal sentence is limited to a certain minimum-maximum period by statutes of law, which is later the precise verdict is determined with little or no discretion by the judge. The determinate sentencing system in criminal justice system contains the sentencing guidelines, the required minimum criminal sentence, and the additional sentences for more severe criminal offenses[23].

This determinate sentencing system was built by means of the Sentencing Reform Act of which had purposes as follows: 1) to improve criminal justice system's ability "to combat crime through an effective, fair sentencing system"; 2) to sought reasonable uniformity in sentencing by narrowing the disparity in criminal sentences imposed for similar criminal offenses and similar offenders' characteristics; 3) "to sought proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of differing severity"[24].

The sentencing structure in the United States criminal justice shows an effort to reduce the disparity of verdict. Consequently, each choice of the offense level and the criminal history category (as the part of Criminal History Points) only has a clear minimum-maximum range, specifically six (6) months or at least a maximum plus 25% of the minimum sanction[25]. In the United States Sentencing Guidelines, there are forty-three (43) offense levels, and in each of the offense levels there are six (6) criminal history categories.

In the American criminal system, the weight of the perpetrator's criminal acts is converted into one (1) assessment reference, particularly in the levels of offense that are expected by the judges' verdict to refer to one (1) level of perpetrator. The reference to the imposition of imprisonment and fine sentence refers to the determination of the level of this offense. The table above shows that the level of violation is seen as a reference value of weights that are shared by judges in the United States. However, in the United States Sentencing Guidelines 2021 fine table there are restrictions, specifically the level

offense above 38 is formulated to be limited to below, and classified into 2 to 3 groups of the level offenses: 1-3, 4-5, 6-7, ... 20- 22 (20, 21, and 22), 23-25, and so on.

The above efforts slightly put the research in difficulties in looking for equivalence of imprisonment and fine sentence. Additionally, the conditions in determining imprisonment at the United States Sentencing Guidelines 2021, the offense level 1, has several options for imprisonment because in offense level, there are 6 categories of Criminal History Category which are at the offense level 2 and above, the criminal history category of certain perpetrators has a higher imprisonment value of 1 month to 36 months. For reference searches, the categories of offenses are 8 and below (3 and below, 4-5, and 6-7) which have a minimum imprisonment value of 0, and avoid offense level of 35-37 and 38 and above because there is a potential for life imprisonment. Further reference can be seen in Sentencing Table in §5A[26].

In the United States criminal justice system, it is found that it does not have a policy formulation that can equate or equalize the value of a fine sentence with its alternative prison sentence. This result is obtained by analyzing the United States Sentencing Guidelines 2021 (hereinafter abbreviated as USSG 2021) especially in the US Sentencing Fine especially under §5E1.2.(c).(3). - Fines for Individual Defendants' Fine Table[27].

Although, this table cannot present itself to show the identified weakness in this paper, when combined with legal material obtained from US Sentencing Table in §5A to identify the minimum and maximum imprisonment length of the offence level interval accordingly, and then comparing it to the economic value of the minimum and maximum imprisonment length of the offense level interval accordingly by a formula that comparing the length of imprisonment with the minimum economic value that can be gain by any person in the society on a specific place and a specific years; disregarding future economic growth, while working in the worst condition allowed by the law, then the legal material will be able to shows some problems as it is shown in Table 1 Criminal Analysis of US Sentencing Guidelines 2021 Table below.

In US Sentencing Fine, the maximum imprisonment from the offense level 3 and below which has a maximum penalty of 9 months, the offense level 4-5 with a maximum of 15 months, and the offense level 6-7 with a maximum of 21 months can have all the same fine value of $9,500. Similarly, the same fact also applies on the reason for the maximum imprisonment in categories 35-37 at the offense level 37. The maximum value,

which is life imprisonment, has a value of $400,000. This can be different in value from the maximum value of life imprisonment at the offense level 38, which is given a value of $500,000.

Table 1 Criminal Analysis of US Sentencing Guidelines 2021 Table (*)

Offense Level	Min prison (Months)	Max prison (Months)	A Minimum	B Maximum	Min Fine / M. Prison	Max Fine / M. Prison	MW x Min Prison	MW x Max Prison
3 and below	0	9	$ 200	$ 9.500	-	$ 1.055,56	$ -	$ 10.440
4-5	0	15	$ 500	$ 9.500	-	$ 633,33	$ -	$ 17.400
6-7	0	21	$ 1.000	$ 9.500	-	$ 452,38	$ -	$ 24.360
8-9	0	27	$ 2.000	$ 20.000	-	$ 740,74	$ -	$ 31.320
10-11	6	33	$ 4.000	$ 40.000	$ 666,67	$ 1.212,12	$ 6.960	$ 38.280
12-13	10	41	$ 5.500	$ 55.000	$ 550,00	$ 1.341,46	$ 11.600	$ 47.560
14-15	15	51	$ 7.500	$ 75.000	$ 500,00	$ 1.470,59	$ 17.400	$ 59.160
16-17	21	63	$ 10.000	$ 95.000	$ 476,19	$ 1.507,94	$ 24.360	$ 73.080
18-19	22	78	$ 10.000	$ 100.000	$ 454,55	$ 1.282,05	$ 25.520	$ 90.480
20-22	33	105	$ 15.000	$ 150.000	$ 454,55	$ 1.428,57	$ 38.280	$ 121.800
23-25	45	125	$ 20.000	$ 200.000	$ 444,44	$ 1.600,00	$ 52.200	$ 145.000
26-28	63	175	$ 25.000	$ 250.000	$ 396,83	$ 1.428,57	$ 73.080	$ 203.000
29-31	87	235	$ 30.000	$ 300.000	$ 344,83	$ 1.276,60	$ 100.920	$ 272.600
32-34	121	327	$ 35.000	$ 350.000	$ 289,26	$ 1.070,34	$ 140.360	$ 379.320
35-37	168	life	$ 40.000	$ 400.000	$ 238,10	-	$ 194.880	-
38 - above	235	life	$ 50.000	$ 500.000	$ 212,77	-	$ 272.600	-

Note: The minimum wage (MW) in the United States in 2021 is $1,160 per month.
(*) Shaded areas with dark gray color indicate that the economic value of imprisonment is higher than the value of the fine sentence.
Source: United States Sentencing Guidelines 2021 (USSG)

In the analysis table above, the minimum economic value (MW x Min Prison) and maximum (MW x Max Prison) imprisonment for each term of offense level is different. Therefore, the economic value of the punishment in this formula is obtained by multiplying the applicable minimum wage (abbreviated as MW) in the United States at least the nearest year (2021) is around US$1,160 per month, or $7.5/hour, 2018 was lower at only $7/hour, wages of low skilled workers: $1,960/month in 2018, wages in manufacturing: $3,712 / month in February 2021, and average overall salary: $4,030.4 / month or $25.19 / hour in February 2021[28].

The reason behind the findings is that the maximum imprisonment from the offence level 3 and below, with a maximum sanction of 9 months, the offence level 4-5 with a maximum sanction of 15 months, and the offence level 6-7 with a maximum sanction of 21 months can have the same fine value as "$9,500". Moreover, the reasoning for the maximum imprisonment in categories 35-37 at the level offence 37, with the maximum value of life imprisonment, is that it has a value of "$400,000". It can be

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different from the maximum value of life imprisonment at offence level 38, rated "$500,000".

In table 1, presented above - Criminal Analysis of US Sentencing Guidelines 2021, The column Min. Fine / M. Prison shows the minimum value of a fine sentence compared to the length of a sentence in months. The column Max. Fine / M. Prison shows the maximum value of a fine sentence compared to the length of a sentence in months. These two columns' value for each offence level shows irregularity or irrationality as it does not show consistent flat reference value nor consistent increasing or decreasing values with observable steps or intervals.

Some show an increased value reference for each increase of fines table offence intervals, but some show a decreased value reference. These columns also show the tendency to reduce the reference value between the fine sentence and imprisonment for the greater offence level interval, which should give more benefit to the fine sentence for the greater offence level interval. For example, it is argued to be irrational to give the minimum value of a fine sentence compared to the length of a prison sentence in months, decreasing for each interval of fines table offence levels. No explanation describes a decrease of reverence value from $666,67 on the lowest offence level with minimum fines; 10 – 11 months, to only $212,77 on the maximum offence level interval; offence level 38-above, with a minimum of 235 months imprisonment.

The findings of this research show that there is no formulation between the severity of the punishment seen from the offence level and the maximum prison sentence when compared to the penal sanction of a fine sentence, which is the alternative. Rationally, the alternative threat model formulation is expected to have equal values between both variables. When the two variables, namely the maximum length of imprisonment, compared to the value of the fine sentence between 1 offence level and another, no similarity pattern shows an equal pattern of difference (neither going up nor going down). It means that there is no consistent pattern. Neither a going-up pattern nor a going-down pattern exists, and – therefore, there is no rational clarity between the two values of imprisonment and the fine sentence at each offence level.

The detected formulation describing the relation between fine sentences and their alternative prison sentence is not equivalent (or in mathematical equation x length prisons sentence $\neq$ y fine sentence). Similarly, it is also detected that the prison sentence as the alternative to the unpaid fine sentence is not equivalent. This can be detected through the

inadequacy of a reference value; a common conversion value between the fine sentence and its alternative prison sentence, which should be consistently flat or otherwise go up or down; although the rationality needs to be explained if available. This situation demonstrates the absence of norms in the formulation or the method of determining the value of a fine sentence equivalent to its alternative prison sentence/imprisonment.

The other two columns are MW x Min Prison; which is the column that shows the proposed economic value minimum prison sentence of the specific offence level interval, and MW x Max Prison; which is the column that shows the proposed economic value maximum prison sentence of the specific offence level interval, shows another irregularity especially the one under greyed cells. Shaded areas with dark grey colour cells indicate that comparing the economic value of imprisonment and its fine sentence shows that it is lesser than the economic value of imprisonment. For example, the offence level interval of 32-34 has a minimum length of imprisonment of 121 months and a maximum imprisonment of 327 months, has a $35.000 minimum fine compared to the economic value of 121 months' imprisonment, which has value according to US minimum wage (abbreviated as MW) in 2021 of $140.360. for the maximum imprisonment compared to the maximum fine sentence of $350.000, compared to $379.320.

The findings of this research also indicate that several formulations of fine sentences are seen to be smaller in value than the economic value of the imprisonment alternative, or in other words, the formulation of the fine sentence is too small compared to the economic value of imprisonment as its alternative. This occurs if the statute of the maximum fine sentence imposed on the convicted makes the potential for the fine sentence more profitable than the economic value of imprisonment; as its alternative. This results in the statute description between a fine sentence and its prison sentence alternative, which possibly causes the inability to achieve the goal of punishment, providing a deterrent effect. A fine sentence more profitable than imprisonment can indicate the unfavourable criminal sentencing conditions that are not achieving its goals: no reasonable uniformity, no proportionality in sentencing; therefore, no ability "to combat crime through an effective and fair sentencing system".

This evidence shows a possibility of the need for more attention given by lawmakers to determine an equivalence formulation between imprisonment and its fine sentence alternative. It is argued that there are some areas for improvement in the United

States Sentencing Guidelines 2021 in the United States, particularly that there is nonequivalence between imprisonment and fine sentence.

The construction of an equivalent value between the value of imprisonment and the value of a fine sentence is critical to consider and demands attention in its formulation. Given that the value of the fine appears to be less than the economic worth of the imprisonment, the judge will avoid imposing a fine term concurrently with the primary punishment; imprisonment. Due to this situation, the judge will consider that the fine is not severe enough, or in other words, the fine sentence can potentially be more profitable than imprisonment. Meanwhile, if the fine is too much, the convicted tends to choose not to pay. In such, these conditions also hinder the achievement of two more objectives, namely *ultimum remedium* and restorative justice which focuses on "crime as harm, and justice as repairing the harm"[29]; cannot be fulfilled.

These issues are not raised alone by this research, George F. Cole expressed crime and justice are important and difficult public policy issues in the United States. It is argued that a balance between maintaining public order and protecting individual freedom is important, both sides of the equation represent American values. In one hand the other hand, if we push too strongly to ensure safety, we could limit individual rights and liberty by unnecessarily restricting, detaining, or punishing too many individuals[30].

5 CONCLUSION

Using the Economic Analysis of Law as a tool of analysis, this research demonstrates a nonequivalence of value between imprisonment and a fine sentence in the United States Sentencing Guidelines 2021. This is proven by the economic calculation of the US Sentencing Fine Table as stated in §5E1.2.(c). (3). United States Sentencing Guidelines 2021 by multiplying the Minimum Wage (MW) in the United States in 2021, which is $1,160 per month by the length of imprisonment, which results in figures that are disproportionate between the imprisonment economic value and its fine sentence alternative.

Furthermore, this finding also indicates the majority that the imprisonment's economic value, acquired as the length of imprisonment multiplied by the minimum wage, is higher than the value of the fine sentence it represents as the alternative to imprisonment. Hence, theoretically, it might hinder the use of the fine sentences in any

Judge's verdict in a double-track or dual-track system, a verdict with a format of imprisonment of a certain length with a certain alternative fine sentence.

Thus, criminal sentencing in the United States still fails to provide a rational formulation regarding the appropriate severity and the proportionality of criminal sentences, which has not been able to provide a fair and just sentencing according to the perspective of the general public. This also hinders the USSG from being able to combat crime through an effective and fair sentencing system.

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