Policy And Criminal Law Enforcement Against The Perpetrators S Of Corruption: “Reorientation Objective Of Condemnation”

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Abstract
This article is a reorientation of the objectives of corruption condemnation. The problem that arises is the imprisonment election policy as the primary penalty which is not in line with the philosophy of criminal law objectives in the economic field. The criminal formulation policy is the most strategically determining the law enforcement policy by judge. The policy on the formulation of imprisonment in Corruption Law Act is at the most, both formulated in cumulative fines or mulative alternative fines penalties. The imprisonment have many weakness, some criticism comes from academic and international institutions. The effectiveness of imprisonment and fines is highly questionable. The objective of EAS needs to be reoriented, which is from the condemnation retaliation objective of imprisonment to the returning the State losses by fines penalty, namely by optimizing fines penalty. In addition there are two fundamental reasons, first, the philosophical issue, that the objective of the imprisonment should provide a justice sense for all the parties, which in turn away from justice sense. Econdly, a theoretical problem is found, where the theories of imprisonment cannot explain the benefits of imprisonment both for the convicted, for the victim, and for the society. There are two conclusions, that the imprisonment policy is not effective in achieving the objective of corruption condemnation to protect the State’s financial losses from corruption. The sentencing of both imprisonment and fines for the perpetrators are still very low and do not represent criminal sanctions as an extraordinary crimes.

Keywords: Policy; Criminal law enforcement; Perpetrators of corruption; Reorientation objective of Condemnation.

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A. Introduction
The policy on the formulation of imprisonment and fines loses rationality. When observing the formulation of imprisonment in Law No. 31 of 1999 Concerning Eradication of Corruption, 14 threats of imprisonment, detailing 12 (twelve) cumulative imprisonment criminal fines or alternative fines. 2 (two) imprisonment singly. This means that every crime is threatened with imprisonment. The minimum length of imprisonment is 1 (one) year and a maximum of 20 (twenty) years. A maximum fine of 1 billion. While in Law No. 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption, the formulation for 10 cumulative imprisonment criminal penalties and cumulative imprisonment for 20 criminal penalties, which means that every criminal act is threatened with imprisonment.

Placing prisons for the most basic crimes with the understanding is that the legislators still adhere to the philosophy of retributive punishment. Whereas the purpose of punishing the criminal acts is to restore state financial losses and not for a retaliation.

Thus the formulation of a maximum fine of 1 billion loss of rationality, is no different from the formulation of criminal penalties that exist in the KUHP (Criminal Code) and other criminal laws. It will benefit the big corruption perpetrators (trillions of state losses).

In the practice of law enforcement, the perpetrators of criminal acts of corruption are prosecuted and sentenced to prison is very light. Supreme Court decisions for corruptors from 2001 to 2009 numbered 549 cases with 831 defendants. With the details of a large Corruptor (state loss of 1 billion - 25 billion) which have 122 high-class and 30 perpetrators (with state losses of 25 billion and above) on average demanded prison terms of 6.7 months and 9.8 months respectively. Supreme Court verdict averaged 3.8 months of major corruptors, and 4.10 of high-level corruptors. In fact, only 50-65 percent
of them who live from the length of imprisonment imposed. State losses by large corruptors Rp. 735.5 billion while state losses by big corruptors Rp. 72.2 Trillion. Big corruptors are demanded to pay 65.6 percent and 44 percent. Supreme Court verdict financial punishment 49.4 percent and 6.7 percent from the state losses. The effectiveness of imposing fines is highly questionable.\(^1\)

Indonesia Corruption Watch (ICW) on May 3, 2018 then launched a trend of corruption case verdicts decided by the court during 2017. The majority of corruption defendants were lightly sentenced by judges. The average sentence for corruptors is only 2 years and 2 months in prison. The effectiveness of imprisonment is very doubtful (diteren effect).\(^2\)

Excessive imprisonment is not only hinders rehabilitation efforts, but also in contrast productive with the philosophy of economic criminal law. Procurement of facilities and infrastructure for fostering prisoners of criminal acts of corruption is very burdensome to state finances, whereas the purpose and objectives of the regulation of economic criminal law is in the framework of how to save state finances from criminal acts that can harm state finances and damage the state economy.

Criminal orientation needs to be directed towards the goal of criminalizing the recovery of state financial losses from corruption. Criminal fines as principal crimes are relevant as alternatives to imprisonment.

This research is a normative legal research using a research method in the form of library research, namely research on written documents as data sourced from secondary data including primary legal materials, secondary legal materials and tertiary legal materials.\(^3\) Primary legal materials are legal materials that bind or make the public understandable, including legal products that are subject to study and legal products as tools to form critical law. Secondary legal materials include explanations of primary legal materials in the form of expert doctrine found in books, journals and websites.\(^4\) The procedure used to collect data in this study is in the form of documentation, namely guidelines used in the form of notes or quotes, searching for legal literature, books and others related to the identification of problems in this study both offline and online.\(^5\) Analysis of legal materials is carried out using the content analysis method (content analysis method) which is carried out by explaining the material of legal events or legal products as tools to form critical law. Secondary legal materials and tertiary legal materials.

B. Discussion

1. Policy on the formulation of criminal sanctions for Corruption

Barda Nawawi Arief, that the criminal law enforcement policy is a series of processes consisting of three stages, namely the first, the legislative / formulative policy stage, formulating and stipulating criminal law, the second is judicial / applicative policies, the application of criminal law carried out by judges , third, the executive / administrative policy stage, the implementation of criminal acts in correctional institutions.\(^6\) Seen as a unity of process, the first policy stage which can also be called the legislative policy stage is the most strategic stage. It is from this legislative stage that a guideline for the following stages is expected.\(^7\) If this strategic plan is not carried out rationally, it will cause many problems in the criminal implementation process in the following stages.

The legislative policy in formulating criminal sanctions in corruption is dominated by imprisonment. The legislature believes that imprisonment is more effective in eradicating corruption.

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\(^1\) Kompas 22 agustus 2012.
\(^4\) Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif: Suatu Tinjauan Singkat, (Jakarta: PT. Raja Grafindo Persada, 2001), hlm. 23-24
Prison penalties are formulated either in combination with a criminal fine or in a singular form. If we observe the criminal formulation policy in various legal laws, imprisonment is a very dominant criminal, in fact almost all laws put sanctions imprisonment. Barda Nawawi Arief noted that there were 575 offenses threatened with imprisonment out of 587 offenses at the KUHP/ Criminal Code. Thereby, imprisonment becomes the most dominant type of sanction imposed by judges in Indonesia.10

Barda Nawawi Arief in his book "Legislative Policy in Combating Crimes with Prison" outlines in detail the significance of legislative policies in the formulation of imprisonment systems as follows:

1. In formulating imprisonment sanctions against criminal offenses, the legislative policy lines in the KUHP can be seen as follows:
   a. Prison penalty is the type of sanction that is most threatened with criminal offenses (listed in about 98% of the formulation of offense);
   b. Prison penalty threatened with criminal offenses are formulated singly and alternatively, ut most (around 70%) are formulated imperatively in a singular form;
   c. The single formulation system exists in almost every crime group (that is, there are 29 crime groups) of the 31 chapters or crime groups in the Criminal Code;
   d. In the case of imprisonment, alternatives are formulated, the most being criminalized with fines (around 20% of the formulation of offense) which are generally relatively light (maximum penalties for the most listed are only Rp. 4,500);

2. The legislative policy lines that are seen in laws outside the Criminal Code in formulating imprisonment sanctions against criminal offenses are as follows:
   a. Imprisonment is also the type of criminal sanction that is most threatened with criminal offenses (listed in about 92% of the formulation of offense);
   b. Threatened prison penalty are singular, alternative, cumulative and cumulative-alternative; the most commonly used formulation system is: first, the cumulative-alternative formulation system in the form of a "jail and / or penalty" criminal threat (about 23%); second, the formulation of alternatives in the form of "prison or fines" (around 21%); and third, the sole formulation of the threat of imprisonment (around 20%);
   c. Although the single formulation system is only the third most frequently used, but with the cumulative formulation (about 10%) which is also imperative and the cumulative-alternative formulation (about 23%) which contains a hidden imperative nature, the formulation of imprisonment threat imperatively the most prominent formulation;

3. The line of legislative policy in the formulation of imprisonment sanctions as referred to in numbers 1 and 2 above, is a formal conducive factor that gives such great opportunities for the number of imprisonment imposed in judicial practice so far.

4. The imperative formulation of the threat of imprisonment (especially singular and cumulative formulations) is the main conducive factor for the large number of imprisonment imposed not on the basis of rational considerations oriented to people.11

Observing the criminal formulation policy in Law Act No. 31 of 1999 concerning Eradication of Corruption, 14 threats of imprisonment, with details of 12 (twelve) cumulative imprisonment penalties or alternative criminal fines. 2 (two) imprisonment singly. This means that every crime is threatened with imprisonment. The minimum length of imprisonment is 1 (one) year and a maximum of 20 (twenty) years. A maximum fine of 1 billion. Thus in Law Act No. 20 of 2001 concerning Amendment to Law Act Number 31 of 1999 concerning Eradication of Corruption, 10 cumulative imprisonment criminal penalties, cumulative imprisonment or 20 criminal penalties, meaning that every criminal act is threatened with imprisonment. The threat of imprisonment is a minimum of 1 (one) year and a maximum of 20 years and a minimum fine of 50,000,000 (fifty million) rupiahs, a maximum of 1,000,000,000 (one billion) rupiahs.

The policy of the formulation of imprisonment threat of a maximum of 20 years imprisonment they will be sentenced to a maximum fine of 1 billion loss of ratio analysis, this remains beneficial for high-class corruptors with trillions in losses to the country. The main problem of legislation is related to the

10 Barda Nawawi Arief, 1994, Kebijakan Legislatif dalam Penanggulangan Kejahatan Dengan Pidana Penjara. Universitas Diponegoro, Semarang. page.70
determination of general minimum and general maximum imprisonment, what is the basic reason in determining the minimum and maximum size of imprisonment. According to Barda Nawawi Arief, difficulties arise not only in the field of theory, but also in the field of practice. In the legislative practice so far, the problem of the size of this conviction also often arises. In the practice of legislative so far which has always set a specific maximum imprisonment for each crime, known as the indefinite system or the maximum system. The theoretical problem that arises is about what is the goal of punishment, has led to various theories of punishment.

Determination and selection of imprisonment sanctions must be done with the rationality approach. A rational approach in choosing and establishing a type of criminal means, that the chosen must be based on certain considerations that are reasonable. Thus the rational approach does not recognize absolutes. There is no absoluteness in the matter of determining a criminal, especially in the issue of "whether the criminal must use a prison sentence", seen in Sudarto’s speech which stated:

"History shows that the so-called crime has changed, so has the so-called criminal. So if people think that the person who committed the theft should be sentenced to prison because it has been seen as "that way", then that person's mind is not right! This is a matter of law enforcement. As for the way in which the law is enforced, it is a matter of choice of what means are considered the most effective and beneficial for achieving goals."

Although prisons are quite often stipulated by lawmakers, in reality the legislation has not been clearly seen, what is the reason or basis for the stipulation of imprisonment as one type of criminal sanctions to tackle crime problems.

Weaknesses of imprisonment can be caused by legislative policies in formulating criminal acts and determining criminal sanctions (duration and brevity of sanctions, as well as types of sanctions), even in the process of criminalization.

We can understand that the lawmakers of the Perpetrators of corruption crimes still place imprisonment as the main crime, which is capable of providing a deterrent effect. Criminal imprisonment as ultimum remedium, criminal as retaliation due to acts. This understanding was developed by retributives adhered by the KUHP. As said by Dwidja Priyatno that KUHP adheres to the philosophy of justice is more inclined to retributive justice.

Early emergence of punishment, justification of punishment is retaliation, which was then known theory of absolute vengeance. According to absolute theory (vergeldings theoreien) (retribution theory), criminal conviction is justified simply because people have committed a crime.

Through Wetboek van Strafrecht since January 1st 1918 this criminal has been applied in Indonesia both universally and renewally. Both theoretical practical is to reduce its behavior. However, it is a fact that on the one hand the crime of deprivation of liberty will still exist even if the names are different and on the other hand without reducing the appreciation of the reformers of the deprivation of liberty, to the criminal will always be attached to losses which are sometimes difficult to overcome, when viewed in terms of objectives to be achieved.

Furthermore, when viewed from the objectives to be achieved imprisonment, philosophically there are conflicting things:

1. That the purpose of prison, first is to guarantee the security of criminal convicts, and secondly to provide opportunities for prisoners to be rehabilitated;
2. That the nature of the prison function above often results in the dehumanization of the perpetrators of crimes and ultimately causes losses for prisoners who are too long in the institution in the form of the prisoner’s inability to continue their lives productively in society.

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14 ibid. Page. 70
The long history of imprisonment, that is, since the introduction of imprisonment in the 16th century in England, and then grew and developed in the 18th century, had paid much attention to pros and cons.\(^{18}\)

Criticisms came from academics as well as from international institutions, as stated by Barda Nawai Arief, that there were two criticisms of imprisonment, namely moderate criticism and extreme criticism.\(^{19}\) In moderate criticism, critics basically still defend the prison sentence, but its use is restricted. As with extreme criticism, these critics expect imprisonment to be abolished.\(^{20}\) By criticizing imprisonment, this does not mean that this kind of punishment must be eliminated, because after all imprisonment is still needed in securing offenders and protecting the public. What the critics said above was about the implementation of imprisonment (strafmodus) and the length of imprisonment (strafmaat).

### 2. Corruption Criminal Law Enforcement against Perpetrators of corruption

Criminal law enforcement is the stage of implementing a criminal formulation policy carried out by the judiciary. The situation is greatly influenced by how the policy formulate the punishment.

In law enforcement practices, the perpetrators of corruption are prosecuted and sentenced to prison is very light. Supreme Court decisions for corruptors from 2001 to 2009 numbered 549 cases with 831 defendants. With the details of large Corruptors (state losses of 1 billion – 25 billion) there are 122 perpetrators and 30 perpetrators (with state losses of 25 billion and above) are on average demanded prison term of 6.7 months and 9.8 months respectively. The average Supreme Court (MA) verdict is 3.8 months for large corruptors and 4.10 for big corruptors. In fact, only 50-65 percent they live from the length of imprisonment imposed. State losses by large corruptors Rp. 735.5 billion while state losses by major corruptors Rp. 72.2 trillion. Big corruptors are required to pay 65.6 percent and 44 percent. The Supreme Court sentences financial penalties of 49.4 percent and 6.7 percent of state losses. The effectiveness of imposing fines is highly questionable.\(^{21}\)

Indonesia Corruption Watch (ICW) on May 3, 2018 then launched a trend of corruption case verdicts decided by the court during 2017. The majority of corruption defendants were lightly sentenced by judges. The average sentence for corruptors is only 2 years and 2 months in prison. The effectiveness of imprisonment is very doubtful about the impact of its deterrence.\(^{22}\)

The verdict average from the Supreme Court (MA) which is 4.10 years of large-scale corruptors with state losses of 1m-25m is a minimum prison sentence. The prison sentence was only served 50-65 percent, meaning that it served for 1.7 months. Supreme Court verdicts on high-rank corruptors with state losses of 25 billion and above, an average of 4.10 months sentenced and served only an average of 2.5 months in prison.

The imprisonment is very low related to irrational criminal policies in determining the level of crime and the type of criminal in the criminal act of corruption, which is the formulation of the lowest threat of imprisonment of 1 year maximum of 20 years, the threat of criminal penalties of the lowest fine of 50 million rupiahs and maxillary 1 billion rupiah.

A low sentence of imprisonment will not achieve the objective of deterring criminal effect. While the philosophy of Law No. 31 of 1999 is to eradicate corruption will be hindered by the irrational formulation of imprisonment policies that have an impact on the implementation of criminal proceedings. The most profitable corruptors are big corruptors, who are threatened with a maximum fine of only 1 billion rupiah, which corrupts trillions of state money with a maximum threat of 20 years imprisonment, in reality only has a 4.10 month sentence. The fact is carried out 50-65 percent of 4.10 months. The fact is demanded an average fine of big corruptors: 65.6 percent and 44 percent and convicted 49.4 percent and 6.7 percent of the state loss.

The policy on the formulation of light fines and formulating fines as alternative fines for imprisonment in the non-corruption law, shows that the legislative intention has not yet made the fines

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\(^{20}\) The prison abolition movement was seen with the International Conference on Prison Abolition (ICOPA) held for the first time in May 1983 in Toronto Canada, the second on 24-27 June 1985 in Amsterdam and the third in 1997 at Montereal, Canada. At this third conference the term "prison abolition" was changed to "penal abolition".

\(^{21}\) Kompas August,22, 2012

as an effective crime in saving state financial losses. In terms of research results, criminal fines are more effective and more important criminal sanctions as alternatives to imprisonment.  

Concerning the imposing of a fine, Syaiful Bakhri in his research entitled "Legislative Policy on Criminal Fines and Its Application in Corruption Eradication Efforts" concluded:

1. The implementation of criminal in Indonesian positive law is not in accordance with the purpose of punishment as stipulated in the KUHP, in reality, criminal fines do not work effectively, although many rules regarding criminal fines impose high criminal fines on perpetrators of crimes, but are not able to create the effect of prevention and deterrent effect.
2. The effectiveness of the application of criminal fines is still being questioned. In judges' corruption cases, judges are more likely to impose high prison sentences and only impose relatively low fines.
3. The formulation of a fine criminal policy must be carried out efficiently, surely and rationally. Related to efforts to tackle corruption, criminal fines must be imposed to the maximum extent possible to cause a deterrent effect.

From this research we can learn that the criminal policy fine in the corruption law was formulated irrationally, and was not followed by a policy of strategic rules in its enforcement.

3. Reorientation of Criminal Objectives

The purpose of criminal punishment needs a reorientation of the criminal act of corruption, which is from the purpose of penalizing penalties on imprisonment to the goal of punishing state losses with criminal penalties, namely by optimizing criminal penalties. The criminal penalties policy must be carried out rationally in an effort to optimize the criminal penalties as a stand-alone criminal to recover state financial losses, and the criminal penalties cannot be replaced with other penalties.

Criminal reorientation of criminal acts of corruption is needed because there are major problems in imprisonment, namely, first, a philosophical problem, that the goal of imprisonment is that it should provide a sense of justice for all parties, which actually leads away from the sense of justice, because the punishment itself stems from the goal of retaliatory punishment. (retributive justice). Secondly, a theoretical problem is found, namely the theories of imprisonment cannot explain the benefits of imprisonment both for the convicted person, for the victim, and for the community.

In terms of the effectiveness of imprisonment viewed from two aspects, namely aspects of community protection and aspects of the improvement of the offender. The effectiveness of imprisonment is seen as a protection of the community, so a prison sentence is said to be effective if the criminal as far as possible can prevent or decrease crime occurred. Data from the Corruption Eradication Commission (KPK) from 2010 to 2018, the number of corruption cases that have been tried and have legal force as illustrated in the table below:

<table>
<thead>
<tr>
<th>Year</th>
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<tbody>
<tr>
<td>2010</td>
<td>34</td>
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<td>2011</td>
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<td>2012</td>
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<td>2016</td>
<td>71</td>
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<tr>
<td>2017</td>
<td>84</td>
</tr>
<tr>
<td>2018</td>
<td>47</td>
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Reading the data above there is an upward trend in the past 10 years. If the effectiveness is measured from the objective of punishment to have a deterrent effect, then this data shows that the imprisonment does not have a deterrent effect. Likewise, if the purpose of punishment is to protect the community, then this data reads the fall of the prison sentence does not provide protection to the community.

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25 Law Faculty MuhammadiyahUniversity Jakarta. Law Journal No. 2 Vol. 17 April 2010: 317 - 334:
The data above does not fully illustrate the effect of conviction with imprisonment, because there are still many facts outside of the channel that are not recorded or not reported (darknumber).

Weaknesses of imprisonment in terms of criminal benefits, there is no research that explains the extent of the influence of imprisonment both from the absolute theory, relative theory, or joint theory.\(^{28}\)

The direction of the development of punishment today is to reduce imprisonment, especially short prison sentences and replace them with fines. And not only as a substitute for a short prison sentence, a fine makes the criminal stand alone and not as an alternative criminal short prison sentence. Criminal fines because in addition to being one type of criminal sanctions that are non-custodial in nature, they are also considered (almost) not to cause stigmatization;\(^{29}\) the convict is not deprived of the social life environment; and in general the convict did not lose his job. Moreover, criminal fines can easily be paid, and economically the state gets input in the form of money or at least saves social costs compared to the type of imprisonment.

On the other hand, the imposition of a criminal fine is not an easy matter to be ignored, and, although, smaller than the threat of imposing a criminal offense, from it also emerge the power of public intervention. Then the state does not suffer losses from the imposition of criminal fines. The imprisonment is irrational, against those who have been sentenced to prison for imposing state money, it is the state that must pay for their rehabilitation.

In the development of criminal sanctions outside the KUHP, there is a tendency to increase the number of criminal penalties, but these policies are not accompanied by other policies relating to the implementation of criminal penalties whose implementation still refers to the provisions in Article 30 and Article 31 of the KUHP. In the provisions of Article 30 of KUHP, there is no definite time limit when fines must be paid and there are also no provisions regarding actions that can force a convicted person to pay the fine for example by seizing or confiscating the property or wealth of the convicted person.

The increasing use of criminal fines outside the KUHP (special criminal law) in sequence can be found among others in: (a) Law Act No. 7 of 1992 jo. Law Act no. 10 of 1998 concerning Banking; (b) Law Act No. 41 of 1999 concerning Forestry; (c) Law Act No. 15 of 2001 concerning Brands; (d) Law Act No. 31 of 1999 jo.Law Act no. 20 of 2001 concerning Eradication of Corruption; (e) Law Act No. 19 of 2002 concerning Copyright; (f) Law Act No. 23 of 2004 concerning the Eradication of Domestic Violence; (g) Law Act No.32 of 2009 concerning Environmental Protection and Management (h) Law Act No. 35 of 2009 concerning Narcotics; (i) Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. The increasing use of criminal fines can be understood that the criminal policy strategy in crime with a new dimension must pay attention to the nature of the problem.

If the nature of the problem is closer to the problems in the fields of economic and trade law, then it is preferred to use sanctions for disciplinary action and / or fines. The development of criminal penalties in various laws outside the Criminal Code should be appreciated, but again not accompanied by a policy strategy in its application.

Appreciation of the development of criminal fines is not enough on the increasing number of threats of fines sanctions, because it is not yet a guarantee to be able to streamline criminal sanctions. The legislative policy that needs to be considered is a policy that covers the entire penal system itself. Determination of the amount or amount of criminal sanctions for fines is only part of the entire system of criminal sanctions for fines.

An overall criminal sanction must also include policies that are expected to guarantee the implementation of the criminal sanction. According to Muladi, things that need to be considered for achieving good law enforcement are:

a. Determination of the amount of criminal fines;

b. The deadline for the payment of fines;


c. Forced actions that are expected to guarantee the payment of fines in the event that the convicted person cannot pay within the stipulated deadline;
d. Guidelines or criteria for imposing fines.  

A comprehensive rational policy in formulating criminal fines is believed to be able to streamline the objective of punishment, as Yesmil Anwar said "as one particular type of criminal, criminal fines are not intended merely for economical purposes, for example just to increase state revenue, but must we associate to add the goals of punishment ".

C. Conclusion

Imprisonment policy is not effective in achieving the objective of corruption condemnation to protect the State's financial losses from corruption. Therefore the purpose of punishment needs to be oriented towards the goal of restoring balance due to criminal acts of corruption, criminal penalties need to be optimized. The imprisonment and fines of the perpetrators of crimes are still very low and do not represent criminal sanctions as extraordinary crimes.

Criminal policy needs to be reoriented by the goal of punishment from imprisonment which is oriented towards retaliation to criminal sanctions which are oriented to the goal of returning the balance of state losses due to non-criminal corruption. For this reason, a comprehensive penal policy is needed. Imposition of fines must be maximum and use strict deadline for maximum payments and forced efforts.

References
