

Penal Individualization Principles of Specific-Minimum Criminal System within Corrupt Criminal Offense In Indonesia

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Abstract

This study focuses on the analysis of penal individualization principles of specific-minimum penal system within corrupt criminal offense in Indonesia. Corruption is one form of crime that inhibit the goals and ideals of the Indonesian nation. One means that believed to eradicate corruption is by using the criminal law. Legal issues are analyzed: What philosophical foundation policy formulation system of corruption criminalization in Indonesia; and how about the criminal individualization principles of specific minimum criminal system within corrupt criminal offense in Indonesia for the future. Philosophical foundation policy formulation of specific minimum criminal system in Indonesia based on the value of justice that aims to protect the interests of the society. The criteria of criminal individualization principles visible from criminal liability is personal, only the guilty are punished, but not seen any of the characters that is tailored to the circumstances of criminal offenders / humanity is linked to the purpose of criminal prosecution. criminal individualization principles of specific-minimum criminal system within corrupt criminal offense in the future still rational for society for the protection of threatened corruption, but should be equilibrated the protection of individuals who reflect the principle of individualization of criminal to formulate specific guidelines for the implementation of the minimum penal, if there are mitigating factors criminal.

Keywords: penal individualization, a specific minimum, corruption.

1. Introduction

Corruption has actually violated the values of Five Basic principles Five Basic principles (Pancasila) is the philosophical foundation of the Indonesian nation and way of life as stated in the Constitution of the Republic of Indonesia Year 1945. Corruption is an act which impede and obstruct the ideals of the nation in which direction the country will be built and the goals to be achieved as defined in paragraph 4 (four) Preamble of the Constitution of the Republic of Indonesia Year 1945 as follows:

By these to form a government of the State of Indonesia which shall protect all the Indonesian people and the entire country of Indonesia and to promote the general welfare, the intellectual life of the nation, and participate establishment of world order based on freedom, abiding peace and social justice, then drafted national independence Indonesia was in an Act of the State of Indonesia, which is established within the structure of the Republic of Indonesia on the basis of the people's sovereignty: Belief in One God, just and civilized humanity, the unity of Indonesia, democracy guided and by the inner wisdom of deliberations / representatives, and to realize social justice for all Indonesian people.⁵

Corruption is very detrimental to the financial state or the state's economy and impedes national development, so it must be eradicated in order to realize a fair and prosperous society based on Five Basic principles (Pancasila) and the Constitution of 1945. Due to corruption that occurred during the financial harm other than the state or national economy, also inhibits the growth and sustainability of national development that demands high efficiency.⁶

Corruption has been endemic in Indonesia, both in quantity and quality and has spread to various sectors. Such conditions require a change in the position angle of view of corruption crimes. Corruption is an extraordinary crime and is often called extra ordinary crimes because it is systemic, endemic wide impact (systematic and widespread) that not only detrimental to the country's financial and economic but also social and economic rights

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⁵ Constitutional Court, Manuscript Comprehensive Amendment Act of the Republic of Indonesia Year 1945, Background, Process and Discussion of Results 1999-2008, Book I, (New York, Secretary-General and Registrar of the Constitutional Court of the Republic of Indonesia, 2008), p. 613.

⁶ See preamble of Act No. 31 of 1999 on Eradication of Corruption, (Yogyakarta Publishers New Red and White, 2008).

violated public, damaging the joints of people's lives, the nation and the state, so the follow up requires tremendous effort too (comprehensive extra ordinary measures).¹

One effort that believed to have efficacy in combating corruption is to use the penal law. According to Nawawi Arief Barda, considering various measures of corruption prevention policy, was impressed that the policy strategy more focused on efforts to "reform Act ("law reform"). Efforts to reform legislation is a step which was duly done, but because of the problem of corruption laden with various complexity of the problem, then the integral approach should be taken. Not only do the "law reform" but also should be accompanied by "social, economic, political, cultural, moral and administrative reform".²

According to Adi Koesno, law enforcement against corruption should be viewed in the context of a holistic social factors are not only legal norms (substance), but also to be seen law enforcement factors (institutional structure) and cultural society factors (culture). In other words, law enforcement charged with breakthroughs smart, considering that the law simply run it is and tend to slump, so it was not in place when the law enforcement just stuck in a mere routine (business as usual) moreover it went along with the law as "merchandise" (business-like), consequently law enforcement will not have any meaning even it contributed to the congestion of law very seriously. Therefore, in conducting prevention of corruption requires law enforcement officials to put the understanding that the law needs to be re-thinking the basic philosophy that "law for man", so that the human becomes the deciding point of orientation and the law. Laws must adhere to the legal ideology that pro-justice.³

The use of penal law in combating corruption in Indonesia is done by holding a deviation from the criminal system adopted in the Criminal Code, by the application of the specific minimum penal system. According to Muladi, taking into account the various interests involved in the enforcement of penal law, the absence of apparent tendencies International, one of which is to develop sanctions (criminal) specific minimum for certain crimes. Development of the specific minimum Penal System is a criminal in order to reduce disparities (disparity of Sentencing) and showed gravity of the offense committed.⁴

Barda Nawawi Arief said the problem is the weakness of the judicial system is the minimum punishment for this particular (both in the law and the eradication of corruption of other laws) is the absence of rules or guidelines for its application. Rules for the application of existing criminal in the main system (the Penal Code) cannot be used because the maximum oriented system, therefore if the legislation beyond the minimum provisions of the Criminal Code makes specific, application should be made a rule of criminal ("straftoemingsregel") that are also specifically.⁵

The absence formulation of sentencing guidelines (strafmodus), have implications in the implementation of law enforcement. This means that the judge does not have guidelines that will be used as a handle or a basic consideration in order to convict beyond the minimum limit specified in the formulation of the offense if there are things that can lighten the punishment for the defendant, as in the specific maximum system that can be exceeded if there are aggravating factors. If the factors that mitigate criminal so dominant, then the judge is required to impose a fair penal, means of protection in addition to considering the interests of society should also be considered the protection of individuals (actors), accordance with the penal principle individualization and the sentencing purpose.

Based on the above, the problems analyzed in this study are: 1). What philosophical foundation policy formulation system of corruption criminalization in Indonesia, 2). What are the criteria of penal individualization principles in specific minimum penal system corrupt criminal offense in Indonesia, 3). How the penal individualization principles of specific-minimum criminal system within corrupt criminal offense in Indonesia for the future.

2. Research Methods

Type of research is a normative legal or also called by doctrinal study, by statute approach, conceptual approach, historical approach, case approach, comparative approach. The collection of legal materials done by documents study, which is analyzed by interpretation or commendation (hermeneutics).

¹ Lili Mulyadi, Corruption in Indonesia: Normative, Theoretical, Practical, and the problem is, (Bandung, PT. Alumni, 2007), p. 2.

² Barda Nawawi Arief, Capita Selecta Criminal Law, (Bandung PT Citra Aditya Bakti, , 2010), hlm. 70

³ Koesno Adi, "As Paradigm Revitalization Law Enforcement and Crime Prevention Direction Corruption in Indonesia ", Paper presented at the Workshop on Crystallization Thought Crime Prevention Muhammadiyah corruption for the sake of the State Law that Actually in Indonesia, Faculty of Law, University of Muhammadiyah Malang 22-23 Juli 2011, p. 2-3

⁴ *Human Rights, Politics, and the Criminal Justice System*, (Semarang, Diponegoro University Publishing Agency), p. 254

⁵ Barda Nawawi Arief, Op Cit, p. 86

3. Results and Discussion

3.1 *Philosophical foundation of penal system within corrupt criminal offense in Indonesia*

Criminal system covers all the statutory provisions that govern how penal law is upheld or operationalized in concrete so the person being sanctioned (penal law). This means that all the rules of law concerning substantive penal law, Formal penal law and criminal law enforcement can be seen as a whole criminal system.¹ Outline criminal system includes three (3) main problems, namely types of crime (strafsoort), the length of the criminal threat (strafmaat) and the enforcement the criminal (strafmodus).

One part that a very important and strategic in the criminal system is the amount determination or length of criminal threats or also known as the punishment severity determination. According to Colin Howard, there are four (4) formulation of the length of the criminal system (strafmaat) are: fixed system / definite sentence a penal threat is definitely, indefinite sentence system a threat to the maximum length of a penal, determinate sentence system it determines a minimum and maximum length of the penal, and indeterminate sentence system no maximum limit specified in the form of penal, but legislator Institutions fully devolved the policy (discretion) at the level of law enforcement, for example the judge.²

According to Nawawi Arief Barda, there are two alternative systems in the formulation of the severity of punishment, namely:

- a. System or the absolute approach, is for any criminal offense set "bonot / quality" of his own, namely by setting a maximum penalty of (can also be a threat minimum) for any criminal offense. Determination of the maximum punishment for each criminal offenses is also known as "system indefinite" or maximum system. Might be called the traditional approach, as long as it's commonly used in the formulation of the Criminal Code in various countries including legislative practice in Indonesia.
- b. Relative system or approach is that for any offense specified severity / quality (maximum punishment) own, but the relative severity used, is to perform the classification of criminal offenses in several levels and also set a maximum penal for the criminal offenses each group. System or relative approach can also be called imaginative approach.³

The objective of the maximum and minimum limits is to give the possibility to take into account how judges in the background and events that by severity of criminal offenses and the offenses way are committed, personal of crime maker, age, and the circumstances of time and the atmosphere was made criminal offenses, in addition to the level of intellectual or intelligence. Thus the determination of the minimum and maximum penal guide the judges in dropping criminal justice.

Policy formulation criminal system in the Law No. 31 Year 1999 on Corruption Eradication that modified by Act No. 20 of 2001 about Amendment Act No. 31 of 1999 on Corruption Eradication is:

- a) Penal types that used are: composed of the principal penal imprisonment, penal fines and the death penalty (there are severity), and consists of an additional penal forfeiture of certain goods, payment of compensation, the closure of all or part of the company, and the revocation of certain privileges or removal of particular advantage .
- b) Severity of penal use two (2) system or pattern of criminal system that is: First, the maximum penal system in the provision of special meaning only offense defined maximum limit severity penal who threatened; second, a special penal system minimum-maximum specific, meaning that the offense provisions defined minimum and maximum limits of penal threatened.
- c) Sentencing guidelines, there are no rules or guidelines for the application of minimum specific penal, therefore based on Article 103 of the Criminal Code, if the other laws are not set then apply the provisions of Chapter I of the Criminal Code, however, the Criminal Code does not specifically use the minimum penal system but common minimum penal system-specific maximum.

The use of the minimum penal system specifically motivated by: First, the fact that a very striking disparity in penal for offenses that are not intrinsically different quality; second, the desire to meet the demands of society which demands an objective minimum standards for certain offenses very reprehensible and harmful / dangerous to society / state, and Third, in order to more effectively influence the general prevention (general prevention) against certain offenses are deemed dangerous and disturbing the public, the law-making body later determines

¹ Barda Nawawi Arief, *Potpourri Flowers Criminal Law Policy*, (Bandung, Citra Aditya Bhakti, 1996), p. 129

² Collin Huward, *An Analysis of Sentencing Authority*, Reshaping The Criminal Law, Ed By PR Glazebook, p. 47

³ Barda Nawawi Arief, *Potpourri Flowers Criminal Law Policy Op Cit*, p. 129

that for certain offenses, in addition there is the maximum penal in particular, is also well defined minimum penal in particular.¹

The use of the minimum penal system specialized in corruption in Indonesia viewed from the aspect of ontology, essentially starting from the value-oriented equity balance of quality basic idea of criminal acts committed by the severity of penal as a form of protection of the public interest as well as acts of corruption and corruption victim, who is axiology refers to the classical penal purposes, namely as a retaliation for the actions that have been performed.

The issue of fairness is actually a philosophy that is always actual problem to be discussed. The linkage between by penal philosophy is categorical appeared two seemingly contradictory approaches that from philosophical thinking on the one hand and legal thought and penologi on the other. In terms of the philosophy of the philosophers focused on the question of why we penalize people. While on the other side of the jurists and expert's penology focused on the question of whether the punishment was successful, effectively, efficiently prevent crime or rehabilitate offenders. The issue of efficacy, effectiveness, efficiency concern lawyers and penology, can only be answered from the point of destination to the attention of philosophers. The purpose in turn suggests an attitude toward moral stance with regard to justice and injustice in a particular punishment for the actions of certain individuals and in certain ways.²

The penal essence from the perspective of Five Basic principles (Pancasila) is the crystallization of value-oriented equity interests in two (mono-dualistic) balanced manner that the interests of society and the interests of the individual (perpetrator). Sentencing reflects the recognition of human (Indonesia) as creatures of One God, the recognition of the greatness of human dignity as a creation of One God, grow the national solidarity with others fellow citizens of the nation, improving maturity as citizens, grow the awareness of the obligation of each individual as a social being who upheld justice along with others as fellow citizens.

Sentencing is a means or a tool that aims to prevent the perpetration of crime by enforcing the rule of law for the sake of public guardianship, promote convict by holding coaching so be good and useful, resolve conflicts caused by criminal offenses, restore balance and bring a sense of peace in the community, and liberating guilt on the convict, and is not intended to make penal offenders suffering and dehumanizing people .

3.2 *The penal individualization-principles criteria of specific minimum criminal system within corrupt criminal offense in Indonesia.*

Principle or principles are nouns (nouns) which are two words that have meaning equal (equivalent) that is beginning, basic, basic law, basic truth that the subject to thinks.³ Relating to the legal principle Paul Scholten argues that legal principles are the basic ideas contained in the legal system and behind each one defined in the legislation and the judge's decision regarding to the provisions and individual decisions can be seen as the explanation.⁴

The principle of individualization of penal nature of thought is the starting base to base in the criminal system oriented or directed at the person of the criminal justice and humanitarian considerations. The principle of individualization penal does not receive enough attention, especially in the Legislation; the theoretical explanation is still not satisfactory, so the problems still require in-depth study, especially if it is associated by justice aspects.

Relating by criminal system, then in addition to considering the imposition of penal acts committed, the factors should also be considered criminal liability and personal circumstances maker factors associated with the goals of sentencing. Relating factors to the individual circumstances of the maker associated with the purpose of sentencing, referring to the principle of individualization of penal.

According to Barda Nawawi arief that the criminal system with a humanistic values approach requires attention to the principle of individualization of criminal containing several characteristics, among others, as follows:

- a. The Responsibility (penal) are personal / individual (personal principle)
- b. Penal only given to those who are guilty (culpabilities principle: no penal without error)
- c. Penal must be adapted to the characteristics and condition of the offender; This means there should be leeway / flexibility for selecting judges in criminal sanctions (type and severity of sanctions) and there must be the possibility of criminal modification (change / adjustment) in its implementation.⁵

¹ *Ibid*, p. 141

² M. Sholehuddin, *Sanctions in Criminal Law System: The Basic Idea Double Track System & Implementation*, (Jakarta, Raja Grafindo Persada, 2003), p. 22

³ Ministry of Education and Culture, *Big Indonesian Dictionary*, p. 70 and 896

⁴ Arief Sidharta, *Reflections About the Law*, (Bandung, Citra Aditya Bakti, 1999), p. 119

⁵ Barda Nawawi Arief, *potpourri flower ... Op Cit.* p. 100-101

Only one perpetrator accountable in the act of doing, and to do such acts cannot be transferred to others. This is evident from the provisions of Article 77 of the Code of Penal (Penal Code), which reads: "The authority of demanded criminal removed, if the defendant dies"

In Law No. 31 Year 1999 on Eradication of Corruption conjugation Act No. 20 of 2001 there are exceptions that responsibility can be transferred to the beneficiary relating to the return of property derived from criminal acts of corruption as defined in Article 34 where the following:

"In the case of the accused died during examination in the trial court, while there has been a loss to the state, the public prosecutor shall submit a copy of the official report of the case files the trial to the prosecutor or the state attorney submitted to the agency carried the injured to the civil suit against the heirs".

The above provisions explained that if the defendant dies, the criminal case against the accused perpetrators legally stopped and cannot proceed, but in order to refund the State which has been a real loss there due to corruption as indicted, then the responsibility was transferred to his heirs.

The second criteria of the principle of individualization of criminal punishment are only meted out to guilty person. Mistakes are always associated with criminals, criminals heckled because he can actually do another. Crimination legal subjects for committing a crime can only be done on those normal states of his heart. To an error in the criminal himself requirement is necessary inner normal circumstances.

According to Sutorius, error criteria can be determined by several things. *First*, the obligation arise makers to recognize the risk of a certain deed protected interests by juridical norms and good value. In other words, offenders understand the impact of his actions.

Second, the offender must have a real precision, in order to prevent unwanted effects within his limitations. This includes; away from harmful deeds, avoid actions that are required proficiency to do so, act cautiously in a dangerous situation, holding earnest preparation before the act and trying to get information about it.¹ Only the people who are normal soul, can we expect to adjust their behavior according to the pattern which has been well-regarded in the society.²

The third criterion of the principle of individualization of penal is that sentencing must be tailored to the conditions or circumstances of the offender so as to permit the elasticity or flexibility and modifications or adjustments in sentencing. In principle espoused minimum penal system specific (in the corruption, auth.) an exception is for certain offenses are considered very harmful, hazardous or disturbing the public or offenses are aggravated by the consequences (Erfolgsqualifizierte delikte).³ However, for the sake of justice and humanity must be balanced against the principle of individualization of criminal means there is leeway in the sentencing guidelines given to the judges to choose the type and severity of penal, and the execution of penal is likely to be a change (modification) in accordance with development convict and the purpose of sentencing.

In guidelines for penal application the provisions have been formulated to guide the judge in considering the aggravating and mitigating matters penal, as well as selecting the appropriate penal acts, errors, and conditions associated with the offender sentencing purposes.

The principle of penal individualization in the penal system specific minimum visible corruption of the provisions of Articles 34 and 38 (5) in respect of criminal responsibility is personal, formulation as an element of the crime of error by using terms such as: it is against the law, for the purpose, with the intention, when known or reasonably suspected, and deliberately, while the third character is not reflected in the criminal system of corruption, for setting specific minimum penal system and not be applied rigidly regulated in guidelines for the application of specific minimum penal if there are things that relieve penal, even penal as mitigating factors specified in such experiments Criminal Code, assistance and conspiracy shall be subject to the same corruption.

3.3 Policy Formulation Sanctions specific-minimum penal system within corrupt criminal offense in Indonesia for the future.

Reconstruction policy or legislative policy formulation in the face of corruption, indeed not an easy job, because corruption is a serious criminal offense and outstanding, which requires precision and discretion to balance the interests of law to be protected can be balanced, harmonized, so that justice is reflected from a variety of interests.

Policy formulation specific minimum penal system, should at least be based on a variety of considerations, include: Policy direction and political development of national laws, policy direction of criminal law (penal policy), criminal policies (criminal policy), and the direction of social policy (social policy) a comprehensive and

¹ Sutorius, *Mistakes As for General Terms and Absence Can Sentenced Same Mistake Once*, translation Setiarjo Gunawan, (no publisher, no date) p. 2.

² Moeljatno, *Principles of Criminal Law*, fourth printing, (Jakarta, Bina Aksara, 1987), p. 160

³ Barda Nawawi Arie, *potpourri flower*. *Op cit*, p. 141

integrated; Determination of policy should be associated with the development of crime; existence of legislation and the reality of criminal law in practice; policy formulation criminal offense in many countries and an international development; and view or expectation in connection with the creation of community justice.¹

For policy formulation criminal system to overcome corruption in the future, researchers tried to pour thoughts as thoughts in reconstructing the criminal system in the eradication of corruption as follows:

1. The Regulation Form

Paying attention the direction and development of the Indonesian criminal law reform is achieving the codification and unification of laws in all regions of the unitary state of Indonesia, the setting of a criminal act or criminal act like integrated in the national criminal justice system (Draft Criminal Code). The regulation of corruption in Chapter XXXII of Corruption indeed is correct, but if corruption was rated as outstanding criminal act that required special arrangements, the arrangements in a separate law can also be maintained.

2. The Penal Provisions Formulation

The formulations of the criminal provisions regarding three (3) fundamental issues in the criminal system are: criminal type, duration or severity of the criminal, and the criminal application of guidelines or rules. The use of existing criminal in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of penal Corruption can still be maintained, both comprising principal penal imprisonment, penal fines and the death penalty, nor additional penal consisting of deprivation of goods moving tangible or intangible, or items that do not move used for or derived from corruption, including companies belonging to the convicted person where they are committed, as well as of the prices of goods that replace these items; The payment of amount replacement equal to as much as property derived from criminal acts of corruption; Closure whole or in part for the company a maximum of 1 (one) year; revocation of all or part of certain rights or removal of all or part of certain advantages, that has been or may be provided by the government to convict.

Considering the form and properties of corruption, the formulation of the severity of penal, a special type of penal lost liberty (prison) and fined is still maintained by pattern specific minimum, specific maximum and maximum-specific patterns for certain corruption. It really depends on the quality of the prohibited acts of corruption, if the quality of corruption relatively severe quality, then it should use the special minimum pattern, while corruption is relatively light use-specific maximum criminal penalty.

Espoused penal system specific minimum must be accompanied by the application of penal form guidelines that will be used as a handle by a judge in its implementation. The guidelines relating to the matters to be considered by the judge in imposing penal, nor the aggravating or alleviate penal.

In the draft of the National Criminal Code sentencing guidelines formulated in 2012 which shall be considered by the judge that: Mistakes penal maker; motive and purpose of a criminal act; inner attitude maker crime, criminal offenses committed whether planned or unplanned; way of committing a crime; attitudes and actions of after committing a crime; biography, social circumstances, and economic circumstances perpetrators penal acts; penal Effect against perpetrators future; penal Effect against victims and their families; Forgiveness of victims and / or their families, and society's view of criminal offenses committed.²

In addition to the guidelines above factors are taken into consideration by the judge are factors that mitigate and aggravate penal. Factors that mitigate penal namely: Experiments with a criminal offense; assisting criminal acts; voluntarily surrender to authorities after committing a crime; criminal acts committed by the pregnant woman; provision of adequate compensation or repair damage as a result voluntarily criminal offense committed; criminal acts committed as a result of a very severe mental shock; criminal offenses committed maker referred to in Article 39 (intent or negligence); or other factor that comes from society living law.³ Mitigation is the reduction penal 1/3 (one third) of the threat of penal the maximum nor specific minimum to certain criminal offenses; for crime punishable death penalty or life imprisonment, the punishment is a maximum of 15 years in prison; penal change from heavier to lighter penal types.

For mitigation against penal perpetrators of corruption must be adapted to the quality and properties of corruption, so not all of the factors that mitigate penal stipulated in the National Draft Penal Code of 2012 can be applied, due to several factors equated with corruption as well as consensus-administration experiment and evil. Therefore, it must be specially formulated as: voluntarily surrender after committing a crime; offenses are committed pregnant women; refund all or a portion of the proceeds of crime committed; another factor that comes from living in a society of law; maker who voluntarily participate in reporting and unpacking of corruption.

¹ Lihat, Al Wisnubroto, *Criminal Law Policy In Computer Abuse Prevention*, (New York, Atma Jaya University Press, 1999) p.241.

² Article 55 of the Penal Code Draft National In 2012

³ *I b i d*, Article 132

4. Conclusion

Based on the above analysis, it can be affirmed as cover some conclusions as follows:

1. The utilization of specific-minimum penal system within corrupt criminal offense in Indonesia from the aspect of ontology essentially the opposite of the value of justice oriented on the basic idea of the balance of quality criminal offenses committed with the severity of penal as a form of protection of the public interest as well as acts of corruption and corruption victim, which is axiology refers to the classical penal purposes, namely as a retaliation for the actions that have been performed.

2. The characteristics of penal individualization principle is: 1). Penal is personal responsibility and cannot be transferred to another person, 2). Penal just dropped against innocent people, and 3). Penal adapted to the circumstances or conditions so that the perpetrators of elasticity or flexibility to permit criminal prosecution.

The principal of penal individualization in specific-minimum penal system within corrupt criminal offense seen from the provisions of Articles 34 and 38 (5) in respect of criminal liability is personal, formulation as an element of the crime of error by using terms such as: unlawfully, with the purpose, with the intention, when known or reasonably suspected, and deliberately, while the third is penal character adapted to the circumstances and conditions of the perpetrator, not reflected in the corruption criminal system, because penal system settings of specific-minimum applied rigidly and does not set guidelines of specific-minimum penal implementation if there are things which relieve penal, even penal as mitigating factors specified in such experiments KHUP, assistance and conspiracy shall be subject to the same penal corruption offense.

3. By considering the values of Five Basic Principles (Pancasila) oriented society balance justice and fairness of penal offenders, individualization of penal principal from various perspectives such as from the aspect of Islamic law, the use of the minimum penal systems in foreign countries, national laws towards political development, and the draft of the National Criminal Code of 2012, the penalty policy formulation specific-minimum of corrupt criminal offense in Indonesia for the future need to be adjusted in accordance with the principles of justice in Five Basic Principles (Pancasila) perspective that considers the balance of community protection and individual protection (penal principle individualization) to consider the mitigating penal.

5. Recommendations

From the analysis and conclusions in this study, it is proposed that the recommendations in the policy formulation penal system aligned with the values of Five Basic Principles (Pancasila) by observing two interests in a balanced way that the interests of the community and interests of individuals which is refers to the penal individualization principle. the policy formulation penal system penal corruption offense in the future, proposed to set guidelines for application of specific minimum penal to be taken into consideration by the judge if there are mitigating factors penal justice and humanity for the sake of the factors included voluntarily surrender after committing corruption; refund the whole of the proceeds of corruption are done; makers are pregnant women; maker who voluntarily role in uncovering and reporting of corruption, and other factors based on justice and humanity.

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