

PENALIDADES MONETÁRIAS NO CÓDIGO PENAL DO VIETNÃ - LIMITAÇÕES E ORIENTAÇÕES PARA MELHORIA

MONETARY PENALTIES IN VIETNAM'S PENAL CODE - LIMITATIONS AND DIRECTIONS FOR IMPROVEMENT

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RESUMO

Objetivo: Este estudo analisa a eficácia e as limitações das penalidades monetárias no Código Penal do Vietnã. Examina se a estrutura atual de multas desencoraja efetivamente os crimes ou favorece desproporcionalmente infratores com maior poder aquisitivo. A pesquisa também investiga possíveis reformas, como a substituição das multas fixas por penalidades baseadas na renda, para garantir mais equidade e efeito dissuasório.

Método: A pesquisa utiliza uma metodologia baseada em revisão bibliográfica, analisando textos legais, práticas judiciais e estudos comparativos de sistemas jurídicos internacionais. A abordagem qualitativa avalia o funcionamento das penalidades monetárias no sistema de justiça do Vietnã, com referência a jurisprudências e disposições legislativas.

Resultados: Os resultados indicam que o sistema atual de multas fixas no Vietnã não inibe de forma eficaz a prática de crimes e gera desigualdades entre infratores de diferentes condições financeiras. Indivíduos com maior poder aquisitivo conseguem pagar as multas sem impacto significativo, reduzindo seu efeito punitivo. Modelos internacionais, como as multas diárias baseadas na renda, surgem como uma alternativa para tornar as penalidades mais proporcionais e justas.

Conclusão: O estudo recomenda reformar o Código Penal do Vietnã para introduzir multas proporcionais à renda, garantindo mais justiça e aumentando o efeito dissuasório. Argumenta-se que as penalidades monetárias devem refletir a capacidade financeira do infrator para evitar que o sistema de justiça favoreça os mais ricos. Ajustes legais também devem incluir mecanismos de fiscalização e transparência para impedir brechas no pagamento das multas.

Palavras-chave: Justiça criminal; Multas diárias baseadas na renda; Alterações legais; Natureza punitiva; Finalidade das penalidades.



ABSTRACT

Objective: This study analyzes the effectiveness and limitations of monetary penalties in Vietnam's Penal Code. It examines whether the current structure of fines effectively deters crime or disproportionately benefits wealthier offenders. The research also explores potential reforms, such as shifting from fixed fines to income-based penalties, to enhance fairness and deterrence.

Method: The research employs a library-based methodology, analyzing legal texts, judicial practices, and comparative studies from international legal frameworks. A qualitative approach is used to assess how monetary penalties function within Vietnam's justice system, with references to case law and legislative provisions.

Results: The findings indicate that Vietnam's current system of fixed fines does not adequately deter criminal behavior and creates disparities between offenders of different financial backgrounds. Wealthy individuals can easily afford fines, reducing their punitive effect. International models, such as income-based day fines, present a potential solution to ensure penalties are proportionate and equitable.

Conclusion: The study recommends reforming Vietnam's Penal Code to introduce income-based fines, ensuring fairness and enhancing deterrence. It argues that monetary penalties should reflect an offender's financial capacity to prevent the justice system from favoring the affluent. Legal adjustments should also incorporate mechanisms for enforcement and transparency to prevent loopholes in fine payment.

Keywords: Criminal justice; Income-based day-fines; Legal amendments; Punitive nature; Purpose of penalties.

1. INTRODUCTION

Monetary penalties, or fines, have been part of Vietnam's Penal Code for several decades since Vietnam attained its independence. Van *et al.* (2024, p.114) note that previous Vietnamese legislation was based on the Confucian culture and the principles of socialist law, most of which focused on the concepts of retribution and education. This view was also seen in how fines as punishment were imposed in the justice system, focusing on moral rehabilitation and maintenance of order. In 1985, Vietnam enacted its first comprehensive Penal Code, which provided for fines as a measure concerning specific economic and administrative offenses (Weggel, 1986, p.415). However, the idea of fines emerged with the opening up of the economy in the 1980s with the *Đổi Mới* process that changed Vietnam from a centrally planned economy to a market-oriented one. Monetary penalties became even more critical as legal enforcement tools with the new challenges arising from economic liberalization,



including corporate fraud, environmental infringements, and corruption. This change can be seen in the Penal Code of 1999 and its updates in 2009 and 2015, where the usage of monetary penalties increased tremendously because of the nation's market economy and the need for legal deterrents (Nhan, 2022, p.18-25). This paper aims to analyze the purpose of penalties in Vietnam's Penal Code, perspectives on the punitive nature of monetary penalties, and the limitations and challenges in applying such penalties in Vietnam.

2. METHODS

This research article is based on library research. The author used a library-based research method to collect the relevant data. The data was collected from reputable publications and analyzed for this research article.

3. FINDINGS AND DISCUSSION

3.1. The purpose of monetary penalties

To maintain social order, the state, as the governing entity, is granted special authority by society to represent the community in applying sanctions, including penalties, against behavior that infringes upon the interests of individuals and organizations within society. Penalties represent society's response to offenders when this is considered the last resort (*Ultima ratio*) (Kindhäuser, 2015). History has demonstrated the inevitable existence of criminal law and the indispensable necessity of penalties for humankind's prosperous coexistence (Wessels and Beulke, 2014). Therefore, in the quest to hold criminals accountable for their misdeeds, protect the community, and shape future behavior, society consistently uses monetary penalties. The objective of the monetary penalties is to strike a balance between the goals of rehabilitating and restoring offenders while protecting everyone in society (Thakur, 2023).

The basis for the state's right to impose criminal responsibility through penalties for criminal acts is that an individual has committed an act infringing upon the interests of the state, other individuals, and organizations. This act violates security, order, and public safety, thereby threatening the collective well-being of society. Criminal law is an effective tool to maintain and ensure security, order, and public



safety, protecting the "right to life, liberty, and individual security" of all members of society (UN General Assembly, 1948). Criminal law employs criminal sanctions as measures to enhance security and public safety, with the principle of social reintegration serving as a practical aspect of punishment (Wessel and Beulke, 2014). Historically, philosophers like Immanuel Kant supported the doctrine of "retribution". Accordingly, punishment was not intended to deter potential criminals but rather to penalize those who had committed criminal acts for causing harm to others (Kant, 1887). From this perspective, many traditional definitions of punishment viewed it as state-authorized retribution for an evil act or the deprivation of something good (Swartz, 1967). This view contrasts with the contemporary trend of applying penalties in a way that harmonizes various interests (Garland, 1990).c According to the Neo-classical school, punishment serves two primary purposes: retribution and deterrence, aimed at achieving general prevention. The Sociological school, on the other hand, defines the purpose of punishment as the reformation and social reintegration of offenders (Chankseliani, 2012).

Today views on absolute theory and relative theory have been reconciled within the unified theory of punishment, where the primary purpose of punishment is to reintegrate offenders into the community. The function of punishment now includes both general and specific prevention (Krey, 2008). According to the Criminal Justice Act 2003, c. 44, § 142 (UK) to achieve this purpose, the punishment applied to offenders must possess both punitive and deterrent characteristics while also focusing on rehabilitation, the offender's individuality and morality, protection of citizens, and remedying the harm caused by criminal acts. This perspective is clearly articulated in the Penal Code of the Russian Federation "*Punishment is applied to restore social justice, reforming the convicted individual, and preventing the commission of new crimes.*" Accordingly, the purpose of punishment is defined as "*restoring social justice, reforming the convicted individual, and preventing the commission of new crimes.*" Similarly, the Penal Codes of countries such as Hungary, Latvia, Lithuania, Romania, Bulgaria, Colombia, and Portugal stipulate that the purpose of punishment is to prevent crime and protect society. In contrast, countries such as Belarus, Kazakhstan, Armenia, Kyrgyzstan, Moldova, Azerbaijan, Tajikistan, and Uzbekistan define the purpose of punishment as restoring social justice, reforming offenders, and preventing them from committing new crimes (Chankseliani, 2014).



The Vietnamese Penal Code (2015) amended (2017) stipulates that the purpose of punishment is *not only to penalize individuals and commercial legal entities who commit crimes but also to educate them on law-abiding consciousness and societal norms, prevent them from committing new crimes, and to educate others to respect the law and prevent and combat crime*. The current study notes that this provision tends to emphasize the punitive nature of penalties. The punitive aspect is reflected in the fact that penalties *"deprive or restrict rights provided by law for convicted individuals"* (Vinh, 1994). From the perspective of emphasizing punishment, penalties are considered *"the most severe coercive measure of the State, fixed in the legally effective conviction of the Court, to deprive or restrict the rights and freedoms of the convicted individual as prescribed by criminal law"* (Cam, 2005) or *"Penalties are the most severe coercive measures of the State, prescribed in the Penal Code, decided by the Court to apply to individuals or commercial legal entities who commit crimes, aimed at depriving or restricting the legitimate rights and interests of those individuals or commercial legal entities"* (Hanoi Law University, 2019). "The purpose of educating and rehabilitating offenders is placed after the punitive purpose of penalties: *"Penalties are state coercive measures applied by the Court to individuals who commit criminal acts as prescribed by criminal law, depriving or restricting certain rights and interests of the convicted individual to educate and rehabilitate offenders to prevent them from committing new crimes"* (Son, 2020)."

Recently, a reconciliatory view emerged, suggesting that the punitive nature of penalties should be limited to a certain extent: *"Penalties are measures of impact under Criminal Law with punitive content, manifested in the deprivation or restriction of rights and interests of individuals or commercial legal entities who commit crimes to the necessary and sufficient extent. Penalties are stipulated in the Penal Code and decided by the court against the very individuals or commercial legal entities who commit crimes"* (Son, 2020). This view is based on the ultima ratio principle, a typical principle in European criminal law. In 2009, the Council of the European Union adopted model provisions that refer to the ultima ratio principle as a guideline for countries in their criminal policies. Although the expression of this principle in the criminal law of each country varies, European countries generally emphasize this principle, along with the principle of proportionality, to ensure a reasonable scope of criminal law with other legal sanctions (Melander, 2013).



What is the cutting edge between serious and minor criminal offenses? A study done by Bui (2020) strongly suggests that monetary penalties have mostly been linked to minor offenses. However, a significant gap exists between a clear definition of minor and serious criminal offenses. As a result, linking these offenses to a specific monetary penalty magnitude has been equally problematic. As a result, the current study assumes the concept of minor offenses as less severe offenses that require simpler procedures to address when compared to serious offenses. Unlike the legal provisions in Vietnam, developed countries like the United Kingdom and the United States of America have classified the magnitude of criminal offenses by using terms like "summary offense"¹ and "misdemeanor"(Lavine, 2011) respectively, to refer to less serious criminal offenses. Although the Vietnamese Penal Code emphasizes the punitive nature of penalties, it includes four non-custodial penalties out of a total of seven primary penalties, namely, warning, fine, non-custodial reform, and expulsion (applicable to foreigners). In the penalty system, monetary penalties are one of two types of penalties that can be both primary and additional. This indicates that one of the priorities in Vietnam's criminal law policy is *"to establish mechanisms to ensure and protect human rights and citizens' rights with quality and effectiveness; to stipulate a system of legal limits on public power"* (Vo, 2020).

3.2. *The punitive nature of monetary penalties*

From the perspective of emphasizing the punitive purpose of penalties, the punitive nature of monetary penalties has also attracted the attention of many scientists. It is undeniable that the punitive nature of monetary penalties is much less severe compared to imprisonment (Trang, 2023). Imprisonment not only deprives individuals of their freedom but, more importantly, leads to complex mental health issues, resulting in consequences such as suicide and self-harm. These are harmful effects of incarceration on the health and well-being of prisoners. This demonstrates that the severity of imprisonment is much higher than that of monetary penalties (Ginneken and Hayes, 2016). Monetary penalties, as an economic punishment measure, are effective if they are deterrent enough to prevent recidivism while limiting the impact on economic activities, as the offender is not isolated from society (Mien, 2015). Monetary penalties are a type of punishment that *"can directly and effectively*

¹ <https://www.legislation.gov.uk/ukpga/1978/30/schedule/1>



impact economically on individuals who commit certain crimes in specific areas as prescribed by law" (Vo, nd.,p. 62,64).

In the Vietnamese Penal Code, monetary penalties serve as both primary and additional penalties. They are applied to both individuals and commercial legal entities who commit crimes. The punitive nature of monetary penalties is reflected in the fact that "*convicted individuals or commercial legal entities are deprived of a certain amount of money depending on the severity of the crime, based on an assessment of the financial situation and income of the convicted individual or commercial legal entity*" (Hanoi Law University, 2019) Monetary penalties are a type of punishment "*with the purpose of economic punishment applied to convicted individuals... aimed at depriving them of certain amounts of money...*"(Viet,2019). These penalties "*force the convicted individual to pay a certain amount of money to the state budget*" (Lam, 2012,p. 61,62,69) Unlike the punitive nature of imprisonment, the punitive nature of monetary penalties is evident when the fine is directly related to the financial benefits obtained from the criminal act or the financial damage caused by the criminal act and can be measured. For criminal acts not related to financial benefits or that do not cause financial damage, it is difficult to measure these benefits and damages, which complicates the basis for applying monetary penalties (Daunton-Fear, 1972, p. 307, 309,310).

On another note, one of the concerns commonly associated with the severity of monetary penalties is an offender's ability to pay when receiving the sentence. For instance, in a case where Criminal A, has a net worth of ten million US dollars, and Criminal B, whose a net worth is one million US dollars. Both are fined one million US dollars a similar offences. Would such rulings be seen as fair or just? To what extent does this uniform approach serve the advancement of fairness for society, and what may be the long-term implications for society in line with this judgment? Is it possible there could be other models that would likely provide a proportional and fair outcome for such cases?

One prominent case is that of The Affluenza Defense: Ethan Couch Case (2013), whereby a 16-year-old Ethan Couch, who comes from a wealthy family, influenced a decision in court of being sentenced to 10 years in prison for driving under the influence of drugs and killing 10 people in the process. Instead of being jailed, his family's wealth changed the approach to rehabilitation, which was a harsher



punishment (Montgomery, 2018). Could the same be the case if Ethan Couch had not come from a wealthy family? In Japan, a case that gained international attention was the Carlos Ghosn case (Nissan Scandal, Japan). Carlos Ghosn, a former chairman of Nissan, was charged in a Tokyo court with gross financial misconduct, which could put him in jail for a significant amount of time. However, he was bailed by a monetary penalty (Nikkei Asia, 2021). A similar case was observed in the United Kingdom, the Glencore Corruption Case (United Kingdom). In this case, the UK Serious Fraud Office (SFO) charged the mining company with significant bribery cases. The mining company Glencore had bribed African countries to secure preferential treatment in their mining and commodity trading business. However, the company was accorded a monetary penalty of 314 million US Dollars to cover the case. Bearing the company's financial capacity, it would be argued that the monetary penalty did not make a difference in addressing the crime. Based on the above three cases, this study observes a substantial imbalance in the justice system across the world whereby the wealthy are given alternatives for more lenient sentences while the less privileged in society, are subjected to harsh sentences, including imprisonment.

U.S. legislators believe that monetary penalties should not be applied when there are other legal measures available *"unless considering the nature and circumstances of the offense and the history and circumstances of the defendant, it is determined that a fine alone is sufficient to protect public order and safety."* (Daunton-Fear, 1972, 307,310) (the argument and the citation contradict each other) This provision requires both an assessment of the nature and degree of danger of the criminal act, as well as consideration of the circumstances of the crime and the economic conditions of the defendant, to ensure that the monetary penalty achieves its purpose based on the economic punishment of the offender.

A key question arises regarding whether monetary penalties can be effectively applied to offenders if someone else is likely to pay the fine on their behalf. For instance, in England, there has been a case where a judge sentenced a disabled defendant, who had committed the offense of using his employer's premises for illegal gambling, to a fine of £100 along with an alternative sentence of six months in prison, based on the assumption that the defendant's employer would cover the fine. A similar scenario is the case of R., who committed an offense to Nie128, in which the court criticized the sentencing judge for taking a *"completely wrong approach"* by imposing



a £75 fine on the defendant based on the assumption that the defendant's employer, who had instructed the defendant to commit the act, would pay the fine (Daunton-Fear, 1972, p. 307, 313). The fundamental purpose of monetary penalties is to punish criminal behavior and, through this process, to educate offenders to become responsible members of their families and society. Therefore, monetary penalties must be applied directly to offenders and not to third parties.

While in principle, monetary penalties should only be applied to offenders who have the means to pay, in practice, it is challenging to control who pays the fine (i.e., the source of the money). As a result, there are instances where fines are paid by third parties on behalf of the offender. Courts typically do not concern themselves with the source of the payment, focusing instead on the defendant's ability to pay and whether the fine has been executed. In practice, even if courts were required to verify the source of the payment, doing so would be a time-consuming and labor-intensive process, especially given the large number of offenders subjected to monetary penalties (O'Malley, 2010, p. 356-366). This presents a significant limitation of monetary penalties, requiring careful consideration and evaluation of their impact on society to inform appropriate criminal policies. Looking at these perspectives in totality, this study argues that the notion of punishment is subject to the clarity, flexibility, and effectiveness of the legal environment created over time in a given society.

3.3. *Limitations and challenges in applying monetary penalties*

Article 35 of the Vietnamese Penal Code stipulates: "*Fines are applied as the primary penalty in the following cases: a) Individuals who commit less serious crimes or serious crimes as prescribed by this Code; b) Individuals who commit grave crimes infringing upon economic management order, environment, public order, public safety and some other crimes as prescribed by this Code.*" Compared to the provisions of the 1999 Penal Code, which was amended and supplemented in 2009, the 2015 Penal Code significantly expanded the scope of monetary penalties. The 1999 Penal Code limited monetary penalties to "*less serious crimes infringing upon economic management order, public order, administrative management order, and some other crimes as prescribed by this Code*". The 2015 Penal Code extended the application to serious crimes, including grave crimes, and expanded the range of offenses eligible



for monetary penalties. The 1999 Penal Code, had 70 articles (70 offenses) only, with 85 penalty frameworks specifying monetary penalties as the principal sanction.

In contrast, the 2015 Penal Code provides for monetary penalties in 103 articles (103 offenses), with 151 penalty frameworks designating monetary penalties as the principal sanction. Therefore, the 2015 Penal Code represents an increase of 33 offenses and 66 provisions where monetary penalties are prescribed as the principal sanction compared to the 1999 Penal Code. Additionally, numerous offenses that previously did not provide for monetary penalties as a principal sanction are now designated as such under the 2015 Penal Code (Trang, 2023). On the other hand, according to Article 54, Clause 3 of the Penal Code, *"The court may impose a penalty below the minimum level of the penalty bracket or change to a lesser penalty."* Therefore, in cases that meet the conditions for applying Clause 3 of Article 54 and where the minimum penalty is non-custodial reform, the court may apply a monetary penalty as a lighter penalty than non-custodial reform, even if the article does not specify a monetary penalty in the sanction section. For example, for an offense involving the infringement of the right to complain or denounce under Article 166, Clause 1 of the Penal Code, where the circumstances satisfy Clause 3 of Article 54, and given that the minimum penalty under Article 166, Clause 1 is non-custodial reform, the court may opt to apply a monetary penalty as a lighter penalty than non-custodial reform.

Although both criminal policy and criminal law have expanded the scope of monetary penalties, in practice, the application of monetary penalties still constitutes a tiny proportion of the total penalties imposed. For example, among the criminal cases adjudicated by the courts of Dong Nai Province from 2019 to 2023, monetary penalties were imposed as the primary penalty in 1,172 cases involving 4,192 defendants (accounting for 17.81%), whereas 23,536 defendants (accounting for 84.89%) received primary penalties other than monetary penalties (Hue, 2024).

- The regulation of monetary penalties based on fixed fine amounts does not ensure fairness and creates difficulties in enforcement.

Unlike many countries, the Vietnamese Penal Code stipulates fines based on fixed amounts starting from one million Dong: *"The fine amount is decided based on the nature and seriousness of the crime, taking into account the offender's financial situation, price fluctuations, but must not be lower than 1,000,000 Dong."* This fixed-



amount approach has several limitations. As stated, monetary penalties' punitive and deterrent effects involve depriving the offender of a specific amount of money. For poor individuals, the deprivation of financial resources through monetary penalties has a significantly more significant impact compared to the wealthy. For people with low incomes, any deprivation of assets reduces their ability to meet their basic needs and those of their dependents. The more impoverished the offender is, the more severe the negative impact of the forfeited assets. The same fine amount imposed on an offender affects the poor and the wealthy differently. For example, a €500 fine represents 50% of someone's monthly income, which is €1,000 per month.

In contrast, for someone with a monthly income of €10,000, a €500 fine represents only 5% of their monthly income. Therefore, applying the same absolute fine to offenders of the same offense but with different incomes effectively results in a harsher punishment for the poor. To ensure relative equity between wealthy and poor offenders, fines should be based on a proportionate income rate rather than an absolute amount.

In practice, most Trial panels determine monetary penalties based on the nature and severity of the criminal act and other factors rather than considering the offender's income. While Article 35 of the Penal Code stipulates that when deciding on monetary penalties, "*the financial situation of the offender should be considered.*" However, it lacks specific guidelines on how to assess "*the financial situation of the offender,*" resulting in most Trial panels often overlooking this issue. For instance, in the case of Ngo Van T, Ngo Van H, and Tran Van T1, who was convicted of gambling, the judgment only noted: "*During the investigation and at the trial, the defendants were candid in their statements and showed remorse; the defendants were first-time offenders and the case was minor... The defendants, being first-time offenders with good character and many mitigating circumstances, and defendant T1 having a low level of education and limited legal awareness... Therefore, the court decided that imposing a monetary penalty as the primary punishment would be sufficient to serve the purposes of deterrence, retribution, education, and general prevention in society.*" In addition to these observations, there were no further remarks on the financial situation or income of the defendants. Based on these considerations, the Trial panel imposed a fine of 25 million VND on defendant Ngo Van T, 23 million VND on defendant Tran Van T1, and 20 million VND on defendant Ngo Van H. Imposing fines



based solely on the nature and severity of the criminal act does not align with the principle of fairness, given the significant income disparities among individuals in society. This method of sentencing also fails to achieve the goal of punishment by depriving the offender of their assets. As previously analyzed, the same monetary fine will represent a substantial portion of the income of a poor individual, thereby significantly affecting their livelihood. In contrast, for wealthy individuals, the fine is negligible and has little to no impact on their standard of living.

Imposing fines based on a day-fine system would address these limitations. The number of income days for which a fine is imposed, similar to other 'time-based' punishments such as imprisonment or community service, would depend on the severity of the crime and various other factors, including culpability and criminal history. The number of fined days reflects the level of societal condemnation of the criminal act and communicates to both the offender and society the state's response to the crime. More severe offenses would result in more fines days, and vice versa (Hirsh, 1996). Consequently, crimes of similar nature and severity would incur the same number of fined days. However, due to differences in income levels, the total monetary amount of the fines would vary among offenders.

4. CONCLUSION

The prevalent notion in Vietnam is that punishment is a more severe legal sanction than other legal sanctions (Hanoi Law University, 2019). Criminal legislators also consider retribution as one of the purposes of punishment, leading to a mentality that emphasizes the retributive nature of punishment. This mentality is evident in legislative and criminal law enforcement practices, as shown in the statistics mentioned above, and is also reflected in public opinion and social psychology.

Retribution is only one of many purposes that criminal law aims to achieve. Among these, an essential purpose related to the state's responsibility is to create changes in the offender's personality, including changes in their nature and "personal identity." This includes changes resulting from multifaceted interventions such as legal, social, psychological, and educational measures. The most challenging aspect of punishment is to "change" the personal offender to reshape their personality and control future behavior. Previous definitions of punishment often leaned towards being



retributive, causing pain and suffering to the offender. However, in modern systems, punishment demonstrates "*how we deal with offenders*" (Swartz, 1967).

To change this mindset, Louis H. Swartz suggests introducing a new and unfamiliar term to denote punishment. He argues that the most critical issue is "*how we treat offenders*" rather than the name of the type of sanction applied. Therefore, a term encompassing "*how we treat offenders*" can be concisely used as "treatment." The most significant limitation of the term "treatment" is that it may lead to the misunderstanding that this is a field of medical care for patients (Swartz, 1967). Replacing the term "punishment" with "treatment" is not merely a change in terminology but a shift in perception from retribution to the education and rehabilitation of offenders to help them become valuable members of their families and society. The purpose of punishment, as stipulated in Article 31 of the Vietnamese Penal Code, should be amended to:

Criminal sanctions are measures aimed at protecting justice and social equity through educating individuals and commercial legal entities who commit crimes to become valuable members of their families and society, and educating and preventing all individuals and organizations in society from committing crimes.

Monetary penalties provide an alternative to imprisonment, with the ability to adjust according to the effectiveness of the offender and the severity of their criminal behavior. The consequences of monetary penalties for offenders are more accessible to remedy compared to imprisonment because the amount can be refunded and compensated in case of wrongful conviction. From an economic perspective, the state incurs minimal cost in applying monetary penalties, and of course, the fines contribute to increasing state budget revenue. Moreover, if applied appropriately, monetary penalties can also be very effective in limiting recidivism, as the fine will have a deterrent effect on reoffending and a preventive effect on others in society. Research in England shows that first-time offenders, particularly those involved in profit-motivated crimes, especially property theft, who are subject to monetary penalties, have meager recidivism rates across most age groups (Daunton-Fear, 1972, p.307, 308). This indicates that the trend of increasing the application of monetary penalties is inevitable soon in Vietnam (Trang, 2018, p.16-20).

To increase the application of monetary penalties, addressing the limitations caused by fixed-amount fines is essential to ensure justice, fairness, and the feasibility



of punishment. Some argue that "*the Penal Code should not stipulate measures to ensure the execution of monetary penalties in the direction of converting from fines to imprisonment*" because "*our country does not yet have a transparent and clear income management channel...*" (Thuy & Nguyet, 2016) This opinion is unconvincing because the issue of income management and determining the average daily income for each population group in the current context is not complex to address. Vietnam is moving towards a cashless economy. By the end of 2023, the number of individual payment accounts in Vietnam exceeded 182.88 million, an increase of 21.8% compared to the same period in 2022. In January 2024, compared to the same period in 2023, non-cash payment transactions increased by 63.3% in volume and 41.45% in value; transactions via the internet increased by 57.85% in volume and 32.43% in value; via mobile phones increased by 68.54% in volume and 41.12% in value. Notably, transactions using QR codes increased by 892.95% in volume and 1,062.01% in value (Anh, 2024). Controlling income and cash flows is entirely feasible in a digital economy moving towards cashless transactions.

On the other hand, on June 30th, 2024, the Government issued Decree 74/2024/ND-CP stipulating the minimum wage for employees working under labor contracts. The decree identifies four regions with specific monthly and hourly minimum wages for each region, with Region IV having the lowest rate of 3,450,000 VND/month and 16,600 VND/hour. Based on this wage, the minimum daily fine can be calculated as 16,600 VND x 8 hours = 132,800 VND/day. Stipulating monetary penalties based on daily income and providing for the conversion of monetary penalties to imprisonment based on the principle: "*one day of unpaid income will be converted to one day of imprisonment*" will ensure that monetary penalties are fully enforced.

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