

History of Fines Regulations on Indonesia's Criminal Code

Anugrah R'lalana Sebayang¹, Sunaryo², Heni Siswanto³

¹Law Doctoral Student, Lampung University, Indonesia

^{2,3} Faculty of Law, Lampung University, Indonesia

ABSTRACT: The Criminal Code as the main manifestation of the material criminal law in Indonesia contains at least two things, the first is the matter of what constitutes a crime. The second is what sanctions or punishments are available to perpetrators of criminal acts. In the criminal system, fines is one type of the various forms of punishment or sanctions available. The existence of criminal fines in Indonesia is as old as the Indonesian criminal law system itself. This paper aims to explain the provisions on criminal fines in the Criminal Code in Indonesia and to analyse and compare the provisions on criminal fines in Indonesia within Law Number 1 of 1946 (or the Old Criminal Code) with the provisions on criminal fines within Law Number 1 of 2023 (or the New Criminal Code). This research is normative legal research. The results of the study show that the provisions on criminal fines in the old Criminal Code are very limited in their formulation and content, which has an impact on the unpopularity of punishment in the form of fines. In the new Criminal Code, the provisions on criminal fines are arranged in a much more complex manner compared to the old Criminal Code due to criticism of the excessive use of the model of punishment for depriving somebody personal liberty, such as imprisonment, as well as the emergence of a new school of thought in which criminal fines are presented as a more humane alternative punishment.

KEYWORDS: Criminal Code, Fines, Indonesia Legal Reformation

I. INTRODUCTION

Criminal law is part of a country's public law, which provides the basis and guidelines for: First, Determining prohibited acts, accompanied by threats or consequences in the form of punishments determined for those who violate the prohibition; Second, Determine when and under what circumstances people who have violated this prohibition can be punished or punished with the threatened punishment. Third, Determine how the application of punishment can be applied if an individual is accused of violating the prohibition. Looking at the Indonesian criminal system, a fine is one of the main types of punishment. A fine is one of the main types of punishment that is threatened and is mainly aimed at the wealth or property of a perpetrator for violating the provisions of the applicable Criminal Code.

Fines are regulated in the Criminal Code (KUHP) which seeks to punish those who violate these provisions by requiring them to pay a certain amount of money or property so that the violators themselves suffer losses and public order is restored. Fines are the main form of punishment which is the oldest form of punishment, preceding imprisonment and the death penalty. According to the Old Criminal Code (Law No. 1 1946), there are types of criminal acts regulated in Article 10 of the old Criminal Code, which consist of two types of criminal acts, namely:

Main Punishments:

- a) Death Penalty;
- b) Imprisonment;
- c) Imprisonment (Kurungan);
- d) Fines;
- e) Covered Penalties.

Additional Punishment:

- a) Revocation of certain rights;
- b) Confiscation of certain goods;
- c) Announcement of Judge's Decision.

The old Criminal Code is a product of the Dutch colonial era that has been implemented since before independence until now. As an effort to develop national law, a new law was drafted to replace the old Criminal Code. The enactment of Law Number 1 of 2023 is intended to replace the old Criminal Code. The enactment of the new Criminal Code certainly brings changes in terms of

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content and formulation compared to the old Criminal Code. Criminal fines are one of the things that have been updated regarding their formulation and content.

Based on the background description, the discussion of the article in this paper are to explain the provisions on criminal fines in the Criminal Code in Indonesia and to analyse and compare the provisions on criminal fines in Indonesia within Law Number 1 of 1946 (or the Old Criminal Code) with the provisions on criminal fines within Law Number 1 of 2023 (or the New Criminal Code).

II. METHODOLOGY

This research is a normative legal research with a statutory, conceptual, and comparative approach. The data used is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The data used is then processed and analyzed qualitatively and described descriptively.

III. RESULT AND DISCUSSION

In the discussion section on the history of criminal fines below, the author will divide it into three discussion segments. The first discussion is about the regulation of criminal fines in the old Criminal Code. The second discussion is the regulation of criminal fines in the new Criminal Code. And the third is the challenge in implementing criminal fines in Indonesia.

A. Fines regulation on old criminal code

A fine is a punishment in the form of an obligation for someone who has violated a prohibition in order to restore legal balance or atone for mistakes by paying a certain amount of money. The fine is threatened as an alternative to imprisonment for almost all violations specified in Book II and Book III of the Criminal Code and laws outside the Criminal Code. Considering the purpose of punishment, a fine is prioritized in crimes against property, so that a balance must be sought between the losses caused by a crime and the amount of the fine that must be paid by the convict. Therefore, the minimum and maximum fines imposed on a crime must be considered carefully.

The regulation on fines in the Criminal Code is determined in Article 10 in conjunction with Article 30 of the Criminal Code. Article 10 of the Criminal Code states that Criminal penalties consist of:

Main Punishments:

- a) Death Penalty;
- b) Imprisonment;
- c) Imprisonment (Kurungan);
- d) Fines;
- e) Covered Penalties.

Additional Punishment:

- a) Revocation of certain rights;
- b) Confiscation of certain goods;
- c) Announcement of Judge's Decision.

Article 30 of the Criminal Code:

- (1) The minimum fine is three rupiahs seventy-five cents.
- (2) If the fine is not paid, it is replaced with imprisonment.
- (3) If there is an increase in the fine due to concurrent or repeated acts, or due to the provisions of Article 52, then the substitute imprisonment is a maximum of eight months. "If an official commits a criminal act in violation of a special obligation of his position, or at the time of committing the criminal act uses the power, opportunity or means given to him because of his position, his sentence may be increased by one third."

If you look at the articles in the Criminal Code, you will not find any articles that state the general maximum limit for criminal fines. In the Criminal Code, criminal fines are determined as a general minimum, but not as a maximum. In the Criminal Code, the limit for determining the maximum amount of criminal fines is specifically stated in each article relating to the type of violation or crime committed. During the implementation of the old Criminal Code, although criminal fines have an important role in the criminal justice system, especially as an alternative to imprisonment for minor crimes and as an effort to provide a broader deterrent effect. Criminal fines are less popular in law enforcement in Indonesia due to several factors, including the relatively small fines in the old Criminal Code, the lack of a deterrent effect, and the tendency of judges to impose imprisonment or detention instead. In addition, there is concern that criminal fines are not effective in providing a deterrent effect, especially in cases of more serious crimes.

B. Fines regulation on new criminal code

The condition of criminal fines in the New Criminal Code shows the condition that Criminal fines are a crime in the form of a sum of money that must be paid by the convict based on a court decision. Law Number 1 of 2023 concerning the Criminal Code or

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often referred to as the New Criminal Code has increased clarity regarding criminal fines, both in terms of their severity and the procedures for their implementation. In imposing a criminal fine, the convict's ability must be considered. In assessing the convict's ability, it must be considered what the convict can spend in relation to his personal and social circumstances without reducing the special minimum criminal fine set for certain criminal acts. The implementation of Criminal Fines is carried out in the following manner: First, the criminal fine can be paid in instalment within a time limit according to the judge's decision. Second, if the criminal fine is not paid in full within the specified time limit, then the unpaid criminal fine can be taken from the convict's assets or income. If no specific minimum is specified, the criminal fine is at least Rp100.000 (one hundred thousand rupiah). The maximum criminal fine is determined based on the following categories:

Category of Fines Law No. 1 of 2023

(1) The maximum criminal fine is determined based on:

- a. Category I, IDR 1,000,000.00 (one million rupiah);
- b. Category II, IDR 10,000,000.00 (ten million rupiah);
- c. Category III, IDR 50,000,000.00 (fifty million rupiah);
- d. Category IV, IDR 200,000,000.00 (two hundred million rupiah);
- e. Category V, IDR 500,000,000.00 (five hundred million rupiah);
- f. Category VI, IDR 2,000,000,000.00 (two billion rupiah);
- g. Category VII, IDR 5,000,000,000.00 (five billion rupiah);
- h. Category VIII, IDR. 50,000,000,000.00 (fifty billion rupiah).

(2) In the event of a change in the value of money, the provisions on the amount of the criminal fine shall be determined by Government Regulation.

The main purpose of using the fine category is to obtain a clear pattern regarding the maximum fines listed for various criminal acts (there are six categories); and to make it easy to make changes (simply by changing paragraph (3) of Article 80), if there are changes in the economic and monetary conditions in our country.

The amount of the above fine threat needs to be anticipated in relation to the fluctuation of the rupiah or if at any time there is a change in the value of money. If this happens, one alternative that can be used is the provision of the amount of the fine determined by Government Regulation. The maximum fine for corporations is the next higher category. The maximum fine for corporations that commit crimes that are threatened with: a maximum imprisonment of 7 (seven) years to 15 (fifteen) years is a Category V fine. The death penalty, life imprisonment, or a maximum imprisonment of 20 (twenty) years is a Category VI fine. The minimum fine for corporations is a Category IV fine. If the taking of wealth or income is not possible, then the unpaid fine is replaced with a social work penalty, supervision penalty, or imprisonment, provided that the fine does not exceed a Category I fine.

The duration of the substitute sentence is: 1. for substitute social work sentences may not be commercialized and is imposed for a maximum of: a. 240 (two hundred and forty) hours for defendants who are 18 (eighteen) years of age and over; and b. 120 (one hundred and twenty) hours for defendants under 18 (eighteen) years of age. 2. Supervision sentences, a minimum of 1 (one) month and a maximum of 1 (one) year; 3. Substitute imprisonment sentences, a minimum of 1 (one) month and a maximum of 1 (one) year which can be increased to a maximum of 1 (one) year 4 (four) months if there is an increase in the fine due to concurrency or because of the existence of aggravating factors for the sentence. The calculation of the length of the substitute sentence is based on the size, for every fine of IDR. 15,000.00 (fifteen thousand rupiah) or less, it is equal to 1 (one) hour of substitute social work; 1 (one) day of supervision or substitute imprisonment.

C. Challenges on implementing fines punishment in Indonesia

The prison-based punishment school has been a common view since the Renaissance. Therefore, it is not surprising that this school is so popular and many countries follow it. The philosophy behind this view is based on the belief that lawbreakers have disturbed social order and damaged the values of society. Therefore, those who break the law should receive punishment commensurate with the crimes they have committed. Moreover, commensurate punishment is also realized by isolating and limiting the freedom of the perpetrators.

Many views state that imprisonment is the most appropriate punishment to create a strong deterrent effect for the perpetrator.⁹ However, in Indonesia, there are several problems that arise when imprisonment is still the main choice in sentencing most defendants. Especially related to the limited facilities of correctional institutions, injustice, and the level of effectiveness of imprisonment itself.

Imprisonment is still the prima donna in relation to the purpose of punishment, namely achieving a deterrent effect for the perpetrator and general prevention. Fine is one type of punishment in the general criminal system. If the object of imprisonment and confinement is the freedom of a person and the object of the death penalty is the soul of a person, the object of a fine is the property of the convict. As a specific type of punishment, this fine is not intended merely for economic purposes, for example,

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merely to increase state revenue, but we must link it to increase the purposes of punishment. Modern criminal law has argued that in certain cases a heavy fine is better and more beneficial than a short-term prison sentence. The weaknesses of fines are inherently contained in the fine itself. The weaknesses are that this fine can be paid or borne by a third party (employer, husband or wife, parents, friends/good acquaintances, and others) so that the punishment imposed is not directly felt by the convict himself. This results in the failure to achieve the nature and purpose of punishment to educate the perpetrator of the crime to become a useful member of society, and to educate the perpetrator of the crime to be responsible for his actions.

However, the use of criminal fines according to Becker and Richard Posner argue informally for the use of fines where possible to avoid the social costs of maintaining prisons, the private disutility of incarceration, and the social waste of idle human capital in jails. Criminal fines contain economic value that is not possessed by imprisonment. The social costs of imprisonment are much greater than collecting criminal fines from a defendant who is able to pay. To determine and impose criminal penalties, the principle of proportionality must be applied. This principle means that the sanctions imposed must be in accordance with the severity of the violation that has been committed. This is one effort to achieve justice. For this reason, the use of fines must continue to be encouraged as a form of income for the state.

CONCLUSIONS

The provisions on criminal fines in the old Criminal Code are very limited in their formulation and content, which has an impact on the unpopularity of punishment in the form of fines. In the new Criminal Code, the provisions on criminal fines are arranged in a much more complex manner compared to the old Criminal Code due to criticism of the excessive use of the model of punishment for depriving somebody personal liberty, such as imprisonment, as well as the emergence of a new school of thought in which criminal fines are presented as a more humane alternative punishment. The weaknesses of fines are inherently contained in the fine itself. The weaknesses are that this fine can be paid or borne by a third party (employer, husband or wife, parents, friends/good acquaintances, and others) so that the punishment imposed is not directly felt by the convict himself. This results in the failure to achieve the nature and purpose of punishment to educate the perpetrator of the crime to become a useful member of society, and to educate the perpetrator of the crime to be responsible for his actions. However, Criminal fines contain economic value that is not possessed by imprisonment. The social costs of imprisonment are much greater than collecting criminal fines from a defendant who is able to pay. To determine and impose criminal penalties, the principle of proportionality must be applied

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