

Normative and Philosophical Analysis of the Reorientation of Criminal Fine Sanction Arrangement in Law Number 1 of 2023

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ABSTRACT: The Indonesian criminal law system experienced a fundamental paradigm shift with the enactment of Law Number 1 of 2023 (National Criminal Code), replacing the colonial legacy Criminal Code based on pure retributive philosophy. This study aims to critically analyze the reorientation of fine sanction arrangement in the National Criminal Code, compare it with the old Criminal Code, and identify the potential and challenges of its implementation. Using normative legal research method with statutory, conceptual, and analytical approaches, this research examines the evolution of punishment philosophy from classical retributive to neo-classical which is more restorative, corrective, and rehabilitative, and influenced by victimology. The results show that the National Criminal Code introduces significant innovations in fines, including: 1) a fine category system (eight categories) that is adaptive to economic changes and inflation; 2) the obligation of the judge to consider the financial capacity of the convicted person (Article 80) to realize distributive justice; and 3) diversification of substitute mechanisms for fines that cannot be paid, from confinement to imprisonment, supervision, or community service, which aims to reduce the problem of prison overcapacity and encourage reintegration. In addition, the National Criminal Code explicitly recognizes corporation as the subject of criminal fine with substantial amount. Philosophically and structurally, these changes reflect efforts to decolonize and humanize punishment. Nonetheless, this research also identifies serious criticisms. Nominal fines, especially for corruption, still pose challenges to deterrence effectiveness and distributive justice as fines can be paid by third parties and potentially burden the less well-off. Furthermore, the reduction in the minimum fine amount for some corruption offenses (Articles 603, 604, and 606 of the National Criminal Code compared to the Anti-Corruption Law) potentially weakens the spirit of corruption eradication and creates philosophical contradictions. The successful implementation of this reform is highly dependent on the paradigm shift of law enforcers and the availability of supporting infrastructure for substitute punishment.

KEYWORDS: Fines, National Criminal Code, Criminal Law, Restorative Justice, Legal Reform.

I. INTRODUCTION

Indonesia's criminal law system has for centuries been based on the Dutch colonial heritage Criminal Code or *Kitab Undang-Undang Hukum Pidana* (KUHP), *Wetboek van Strafrecht voor Nederlandsch-Indie* (WvS), which was enacted on January 1, 1918 and adopted after Indonesia's independence. This old Criminal Code, fundamentally rooted in a purely retributive philosophy of punishment, viewed punishment as appropriate retribution for wrongdoing (*lex talionis*), with a primary focus on the offender's suffering without consideration of future goals. Over time, this legal framework is increasingly considered no longer relevant to the spirit of independence, the values of Pancasila, as well as the dynamics of society, science, and technology in modern Indonesia, especially in terms of respect for human rights and responsiveness to social justice. The need for a comprehensive codification of national criminal law (the new KUHP), responsive to social realities, and based on the nation's values has become increasingly urgent, encouraging criminal law reform efforts that have been ongoing for decades.

In the context of this monumental reformation, the reorientation of the regulation of criminal fines becomes a very crucial aspect. Fines, as one of the main types of punishment in the criminal law system, have a vital role in achieving the objectives of punishment. However, in the old Criminal Code, the regulation of fines has many limitations that reduce its effectiveness. The static and very low nominal value of fines, such as Rp 4,500 for property damage or Rp 900 for theft, is often no longer relevant to the changing economic conditions and inflation rate. Although there have been adjustments through Government Regulation in Lieu of Law (*Perppu*) Number 2 of 2012 which multiplies fines up to 1,000 times, these values remain disproportionate and lose their deterrent effect, especially for perpetrators with higher economic capacity. This limitation, coupled with the option of substitute punishment which is only confinement, often encourages law enforcers to prefer imprisonment even for minor crimes. The direct consequence

Normative and Philosophical Analysis of the Reorientation of Criminal Fine Sanction Arrangement in Law Number 1 of 2023

of this practice is the chronic problem of overcapacity of correctional institutions or *Lembaga Pemasyarakatan (Lapas)*, which has become a systemic challenge in Indonesia's correctional system and has an impact on the safety and comfort of residents.

Therefore, the enactment of Law Number 1 of 2023 on the National Criminal Code (KUHP) marks a fundamental paradigm shift in the punishment system. This reform is driven by the mission of decolonization, democratization of criminal law, consolidation of criminal law, as well as adaptation and harmonization to the development of international human rights law and standards. The National Criminal Code explicitly adopts a modern punishment philosophy that is oriented towards corrective, restorative, and rehabilitative justice, leaving behind the previously dominant purely retributive approach. The reorientation of fines, with a new categorization system (8 categories with a much higher nominal value and can be adjusted through Government Regulation), more diverse substitute mechanisms (substitute imprisonment, supervision, or social work), as well as consideration of the financial capacity of the convict (Article 80), is one of the key manifestations of this philosophical shift. This aims to create a more proportional, humanist, effective, and just punishment system, as well as a strategic solution to optimize the function of fines as an instrument of justice that is oriented towards recovery and reintegration.

This study aims to critically analyze the normative and philosophical aspects of the reorientation of criminal fine in Law Number 1 of 2023, compare it with the regulation of criminal fine in the old Criminal Code, and identify the potential and challenges that may arise in its implementation. The result of this research is expected to provide substantial academic contribution to the understanding of the new Indonesian criminal law system, particularly regarding criminal fines. In addition, this research is expected to be a valuable reference for policy makers, law enforcement officials, and the general public in understanding and implementing Law Number 1 of 2023, as well as encouraging further discussion on the effectiveness and fairness of criminal fines in the context of modern criminal law.

II. METHODOLOGY

This research uses normative legal research method, which makes legal theory as the main foundation in analyzing the problem. This approach is very relevant to examine the legal norms, principles, and philosophy underlying the regulation of criminal fines in the National Criminal Code. The approaches used include Statute Approach to carefully examine Law Number 1 of 1946 (Old Criminal Code) and Law Number 1 of 2023 (National Criminal Code), particularly articles that regulate fines, categorization, and substitution mechanism. Furthermore, Conceptual Approach is used to examine relevant legal concepts and theories such as retributive, utilitarian, restorative theories, as well as the principle of legality, the principle of guilt, the principle of proportionality, and the principle of human rights. Analytical Approach involves critical analysis of the normative and philosophical implications of the reorientation of criminal fines, as well as the potential and challenges in its implementation.

The sources of legal materials in this research consist of primary legal materials, namely Law Number 1 of 1946 and Law Number 1 of 2023, as well as secondary legal materials in the form of legal literature, scientific journals, books, research results, articles, and views of relevant criminal law experts. Data collection techniques are carried out through library research, namely by collecting and reviewing various legal documents and scientific publications. The data collected is then analyzed qualitatively with a descriptive-analytical method, in which information is interpreted, connected, and analyzed systematically to answer the problem formulation. The results of the analysis are presented in the form of in-depth descriptions and logical arguments, in order to provide a critical review of the reorientation of the regulation of criminal fines.

III. RESULT AND DISCUSSION

A. Evolution of Punishment Philosophy from Retributive to Modern Approach (Neo-Classical)

The philosophy of punishment has undergone significant evolution throughout the history of criminal law, reflecting changes in society's understanding of justice, punishment, and the purpose of the state. Indonesia's old Criminal Code, rooted in the *Wetboek van Strafrecht voor Nederlandsch-Indie*, was based on the Classical school of thought that developed in the 18th century. This school focuses the attention of criminal law on the act (*daad*) or criminal offense itself, with a strong emphasis on the principle of *nullum delictum, nulla poena sine praevia lege poenali* (no criminal act, no punishment without a criminal law that precedes it) which is explicitly stated in Article 1 section (1) of the old Criminal Code. In this view, punishment is seen as an appropriate retribution for the act committed, with a focus on legal certainty and retribution.

In contrast to the rigid classical approach, the National Criminal Code (Law Number 1 of 2023) is based on the Neo-Classical school of thought that emerged in the 19th century. This school seeks to maintain a balance between objective factors (act/outward) and subjective factors (person/inward/inner attitude). The Neo-Classical approach does not only focus on the act that occurred, but also considers the individual aspects of the criminal, such as motives, inner attitudes, life history, and socio-economic conditions.

This shift was also strongly influenced by the development of victimology, the science of crime victims, which developed rapidly after World War II. Victimology is concerned with the fair treatment of victims of crime and abuse of power. This encouraged the criminal law system to focus not only on the offender and the state, but also on the recovery and protection of victims. The philosophy of *daad-dader strafrecht*, which is more humane and comprehensive, systemically colors the National Criminal Code.

Normative and Philosophical Analysis of the Reorientation of Criminal Fine Sanction Arrangement in Law Number 1 of 2023

This can be seen from various arrangements that seek to maintain a balance between objective and subjective elements in punishment. This paradigm shift is not merely a technical change in legal formulation, but a reflection of Indonesia's efforts to build a criminal law system that is in accordance with the identity and values of the nation, as well as more progressive international standards. A more humane approach that considers the individual aspects of perpetrators and victims is a manifestation of the value of the second principle of Pancasila, which reads "Just and civilized humanity" and human rights promoted by an independent state. This change shows that the reorientation of criminal fines is an integral part of a larger legal project for the decolonization and democratization of Indonesian criminal law, which seeks to balance universal principles with distinctive local contexts.

The philosophical reorientation in the National Criminal Code is explicitly reflected in the formulation of objectives and guidelines for punishment. Article 51 of the National Criminal Code comprehensively formulates the objectives of punishment, namely: To prevent criminal offenses by enforcing legal norms for the protection and protection of the community; to rehabilitate convicts by providing guidance and mentoring to become a good and useful person; to resolve conflicts arising from criminal offenses, restore balance, and bring a sense of security and peace in the community; and to foster remorse and relieve the guilt of convicts. It is important to underline that punishment is not intended to degrade human dignity.

In adjudicating a criminal case, judges are obliged to uphold law and justice. If there is a conflict between legal certainty and justice, the judge is obliged to prioritize justice. This principle gives judges the flexibility to impose fairer decisions in individual cases, even if it means deviating from a rigid application of the law.

Article 54 of the National Criminal Code details the various considerations that judges must take into account in sentencing, including: the form of the perpetrator's guilt, motive and purpose, mental attitude, planning of the crime, manner of committing the crime, attitude and actions of the perpetrator after the crime, life history, social and economic circumstances of the perpetrator, the effect of the punishment on the future of the perpetrator, the effect of the crime on the victim or the victim's family, forgiveness from the victim, and the values of law and justice that live in society. In addition, the severity of the act, the personal circumstances of the perpetrator, or the circumstances at the time of the Criminal Offense as well as those that occur later can be used as a basis for consideration not to impose punishment or not to impose measures, taking into account aspects of justice and humanity (known as *judicial pardon*).

This very comprehensive purpose of punishment, which includes prevention, rehabilitation, conflict resolution, and remorse, as well as an emphasis on human dignity, has direct implications for fines. As one of the main types of punishment, fines must be aligned with these objectives. If the purpose of punishment is rehabilitation and conflict resolution, then fines cannot be merely retributive or burdensome without a constructive purpose. The emphasis on the "ability of the convicted person" (Article 80 of the National Criminal Code) in imposing fines and the diversification of substitute punishments (such as community service and supervision) demonstrate efforts to integrate rehabilitative and restorative goals. This ensures that fines are not a barrier to social reintegration, but rather a tool to achieve more holistic justice. This represents a philosophical shift from mere "revenge" to "repair" in the punishment system.

In the main criminal structure of the National Criminal Code, fine is placed as one of the main types of punishment, along with imprisonment, closure punishment, supervision punishment, and social work punishment. This order of punishment hierarchically determines the severity or lightness of the punishment. Fines can be imposed if the judge is of the opinion that it is not necessary to impose imprisonment, especially for criminal offenses punishable by imprisonment under 5 (five) years. However, there is a limitation that fine can only be imposed if the criminal offense is victimless, the victim is not concerned, or it is not a repetition of criminal offense.

The placement of fine as an alternative to short-term imprisonment is in line with the Neo-Classical philosophy that seeks to find alternatives to criminal deprivation of liberty that are more humane and rehabilitative. Fines are seen as a more solutive solution for minor offenses or those punishable by short-term imprisonment, because it can reduce the burden on correctional institutions and provide opportunities for rehabilitation outside the institution.

However, the strict limitation stipulated in Article 71 section (2) of the National Criminal Code, which requires no victim or no objection from the victim, as well as not being a repeat offender, shows that despite the desire for humanization, there are concerns about the effectiveness of fines as a deterrent for certain cases or repeat offenders. This indicates that fines are not yet fully considered equivalent to imprisonment in all contexts, especially for crimes that have a wide impact or are committed repeatedly.

B. Arrangement of Criminal Fine Sanction in the Old Criminal Code (Law Number 1 of 1946)

Indonesia's old Criminal Code, which was enacted through Law Number 1 of 1946, was basically an adoption of the *Wetboek van Strafrecht voor Nederlandsch-Indie* (WvS NI) which had been in effect since 1915. The underlying philosophy of the old Criminal Code was the Classical School, which focused on the act (*daad*) and the principle of rigid legality (*nullum delictum, nulla poena sine praevia lege poenali*). This approach emphasizes legal certainty and retribution as the main objectives of punishment, with little attention to the individual aspects of the perpetrator or the impact on the victim.

Normative and Philosophical Analysis of the Reorientation of Criminal Fine Sanction Arrangement in Law Number 1 of 2023

Law Number 1 of 1946 itself does not specifically regulate the nominal fine explicitly in its text, but rather refers to the criminal law regulations in force on March 8, 1942, namely the WvS NI. The nominal fine in WvS NI was initially very small, for example a minimum fine of 25 cents. The first significant change to the nominal fine occurred through Government Regulation in Lieu of Law (*Perppu*) Number 18 of 1960. This *Perppu* doubled the amount of fines in the KUHP to 15 times and changed the currency to Rupiah. For example, the highest fine in Article 403 of the Criminal Code from Rp1,000 became Rp15,000. Then, in 2012, the Supreme Court issued Supreme Court Regulation (*Perma*) Number 2 of 2012. This regulation adjusted the limits of minor offenses and the amount of fines in the Criminal Code, by multiplying the maximum amount of fines to 1,000 times, except for Article 303 sections (1) and (2), and Article 303 section (1) and (2).

The partial and *ad hoc* changes in nominal fines (through *Perppu* and *Perma*) show a response to the continuous inflation of currency values. However, because they are not integrated into the structure of the Criminal Code and do not fundamentally change the philosophy of fines, these efforts become a "patchwork" that is ineffective in maintaining the relevance and effectiveness of criminal fines. Despite the doubling, the fine amount is still considered "too light in comparison to the value of the currency" and "no longer appropriate to the circumstances". This has led to a reluctance on the part of law enforcers to impose fines because the amount is no longer appropriate. The failure of the old fine system to adapt to economic changes is one of the main drivers of the reorientation of fines in the National Criminal Code, which seeks to address this issue with a more dynamic categorical system.

Under the old Criminal Code, if the fine imposed cannot be paid by the convict, then the fine will be replaced by imprisonment. This mechanism aims to ensure a balance between the fine and the substitute punishment, as well as facilitate the execution of the decision, thereby preventing the occurrence of "chronic arrears" of uncollected fines. Although confinement in lieu of fines is intended to ensure execution and prevent arrears, in practice, this often means that those who are unable to pay the fine will end up in a penitentiary or detention center, while those who are able to pay can avoid deprivation of liberty. This situation raises philosophical questions about distributive justice and whether the system indirectly creates "prisons for the poor." This occurs because the fine can be paid by a third party, so that the convicted person does not feel the direct deterrent effect of the punishment.

Fines under the old Criminal Code were perceived as not fulfilling the people's sense of justice due to the disproportionate value of retaliation. The effectiveness of fine punishment is considered lacking, especially in terms of deterrence, because the fine can be paid by a third party (for example, employer, spouse, parents, or friends), which means that the convict does not directly feel the punishment. This can hinder the purpose of punishment to rehabilitate offenders into useful members of society and educate them to take responsibility for their actions. Law enforcers, particularly prosecutors as executors, have complained about the difficulty of collecting fines, especially from convicted offenders who are not in custody, leading to the phenomenon of "chronic arrears". In addition, the declining value of the currency has resulted in the nominal value of fines becoming too light, making law enforcers reluctant to apply them.

The failure of fines in the old Criminal Code to fulfill the purpose of punishment and create justice perceived by the community is one of the main catalysts for comprehensive criminal law reform. This problem is not just a technical issue, but is rooted in the Classical philosophy that is rigid and not adaptive to socio-economic changes. Static amounts and unfair substitute confinement exacerbated the problem, prompting the search for a more adaptive and humane system as promoted by the National Criminal Code. The challenges faced by the old fines have become valuable lessons in the reformulation of fine sanctions in the National Criminal Code, which seeks to address these problems with a different approach.

C. Reorientation of Penal Sanction Arrangement in the National Criminal Code (Law Number 1 of 2023)

The National Criminal Code explicitly abandons the retributive approach that focuses too much on imprisonment and begins to accommodate conflict resolution based on restorative and rehabilitative justice. The main vision of the National Criminal Code is to realize corrective justice, restorative justice, and rehabilitative justice. In this new paradigm, fine is expected to be the best alternative solution, which is reconstructed in accordance with the values of Pancasila.

In this context, fines are no longer solely viewed as a means of retaliation, but rather as an instrument that can contribute to the recovery of victims (through payment of compensation), rehabilitation of offenders (through consideration of the ability to pay and alternative substitute punishment), and restoration of social balance. This is an attempt to make fines more than just a "price to pay," but rather part of a broader process to achieve more comprehensive and humane justice, in line with the goals of more modern sentencing. This new paradigm elevates fines from a mere punitive measure to a multifaceted instrument designed to achieve broader goals of justice. By explicitly linking fines to "victim recovery," "offender rehabilitation," and "restoration of social balance," the National Criminal Code seeks to integrate monetary sanctions into a more comprehensive process of justice. This represents a shift in the purpose of fines, where their effectiveness is measured not only by preventing crime or generating revenue, but also by their contribution to social repair and individual reintegration, reflecting the humanistic aspirations of the new law.

One of the most prominent innovations in the reorientation of fines in the National Criminal Code is the introduction of a categorical system. Article 79 section(1) of the National Criminal Code formulates fines in eight categories, from Category I to

Normative and Philosophical Analysis of the Reorientation of Criminal Fine Sanction Arrangement in Law Number 1 of 2023

Category VIII. This system is intended so that in the formulation of criminal offense, it is not necessary to mention a certain amount of fine, but simply point to the category that has been determined.

The main purpose of this category system is to obtain a clear amount of maximum fines listed for various criminal offenses, as well as to facilitate adjustments in the event of economic and monetary changes, especially due to inflation. Thus, changes in the value of money can be accommodated through Government Regulations without the need to amend every article of the criminal offense that imposes a fine. This is a direct response to the problem of "legal inflation" and irrelevant fine amounts which were significant weaknesses in the old KUHP.

Table 1: Categories of Criminal Fines in Law Number 1 of 2023 and their Maximum Amounts

Category	Maximum Nominal Fine
Category I	Rp1,000,000.00
Category II	Rp10,000,000.00
Category III	Rp50,000,000.00
Category IV	Rp200,000,000.00
Category V	Rp500,000,000.00
Category VI	Rp2,000,000,000.00
Category VII	Rp5,000,000,000.00
Category VIII	Rp 50,000,000,000.00

Source: Article 79 article (1) of Law Number 1 of 2023

D. Consideration of the Convict's Ability and Payment Mechanism

The National Criminal Code introduces an important provision that requires the judge to consider the financial capability of the convict in imposing a fine. Article 80 section (1) explicitly states that the judge is obliged to consider the ability of the defendant by taking into account the defendant's real income and expenses. This provision is an effort to address criticism of the old fine system which is often unfair to low-income groups, where fines can be a disproportionate burden.

In addition, the National Criminal Code also regulates a more flexible fine payment mechanism. The fine must be paid within a certain period of time as stated in the court decision, and the decision may specify the payment of the fine in installments. If the fine is not paid within the specified period, the wealth or income of the convict may be confiscated and auctioned by the prosecutor to pay off the unpaid fine.

This provision philosophically approaches the principle of *day fines* (income-based fines) without adopting the full unit system. The aim is to prevent fines from becoming a disproportionate burden on the poor, and at the same time, ensure fines can be executed more effectively, reducing "chronic arrears" and making fines less of an administrative formality. This demonstrates a commitment to distributive justice in the imposition of fines. The explicit requirement for judges to consider the "financial capacity of the convicted person" and the introduction of flexible payment options is a direct and targeted response to the "prison for the poor" criticism of the old Penal Code. This is a significant philosophical and practical step towards achieving distributive justice in fines. By linking the amount of the fine to the actual financial capacity of the offender, the new Penal Code aims to ensure that the impact of punishment is fair across different socio-economic strata, not just the nominal amount. This is a crucial aspect of the humanization of punishment.

One of the other important innovations in the National Penal Code is the diversification of mechanisms for the substitution of unpaid fines. If confiscation and auction of the wealth or income of the convict is insufficient or impossible to be implemented, the unpaid fine (with a maximum limit of Category II) can be replaced with imprisonment, supervision punishment, or social work punishment. Supervision punishment and social work punishment are new types of punishment introduced in the National Criminal Code. Both are developed as an alternative to short-term deprivation of liberty punishment, with the main objective of rehabilitation and social reintegration. Supervision punishment allows convicts to undergo guidance outside correctional institutions, while social work punishment involves convicts in beneficial activities in the community.

This diversification of fine substitution mechanism is a real manifestation of the philosophy of *daad-dader strafrecht* and rehabilitative/restorative approach adopted by the National Criminal Code. This seeks to avoid the imposition of short-term imprisonment which is often ineffective and stigmatizing for the perpetrators. By providing more diverse substitute punishment options, judges can choose the sanction that best suits the condition of the offender and the purpose of punishment, encouraging social reintegration without always having to go through imprisonment. However, the effectiveness of supervision or community service as a substitute for fines still needs to be studied and evaluated in practice. By offering alternatives such as supervision and community service, the law aims to provide a more constructive and less stigmatizing pathway for offenders. However, the success

Normative and Philosophical Analysis of the Reorientation of Criminal Fine Sanction Arrangement in Law Number 1 of 2023

of these innovations largely depends on the availability of infrastructure, resources, and trained personnel to effectively manage and monitor offenders in these non-prison settings.

E. Comparison of Philosophical and Structural Fine Sentencing

The shift in the philosophy of fine punishment from the old Criminal Code to the National Criminal Code is fundamental. The old KUHP, rooted in Classical philosophy, tends to be retributive and focuses on the act (*daad*) as the basis of punishment, with a nominal fine that is static and less adaptive to the condition of the offender. In contrast, the National Criminal Code adopts a more comprehensive Neo-Classical philosophy, balancing between the act and the perpetrator (*daad-dader strafrecht*). This approach is also heavily influenced by victimology, so that the purpose of punishment is not only retributive, but also restorative and rehabilitative. In the context of fines, this change in philosophy means a transition from simply setting a "price" for an offense to an attempt to integrate fines as part of a broader solution for justice. This takes into account the impact on the victim, the ability of the offender, and the goal of rehabilitation.

This philosophical comparison reveals that fine reform is not just a technical adjustment, but an ideological battleground. The shift from a rigid retributive philosophy to a more flexible and restorative one signals a fundamental redefinition of the meaning of "justice" in Indonesia. This redefinition is deeply connected to national identity (the values of Pancasila) and a conscious effort to break away from colonial legal thinking. The success of this reorientation depends on the acceptance and internalization of this new philosophy by all stakeholders, especially within the judiciary and law enforcement, which can be a slow and challenging process given the deeply entrenched legal culture.

Structurally and mechanically, the National Criminal Code shows a significant increase in adaptability and humanization compared to the old Criminal Code. The old KUHP imposed very small fines, which were later amended *on an ad hoc* basis through *Perppu* Number 18 of 1960 and *Perma* Number 2 of 2012 in response to inflation. The only replacement mechanism for unpaid fines is imprisonment.

The National Criminal Code, on the other hand, introduces a larger and more dynamic system of fine categories, which can be adjusted through Government Regulation. In addition, the National Criminal Code diversifies the punishment in lieu of fine into imprisonment, supervision, or community service, depending on the category of fine imposed. Also important is the obligation of the judge to consider the ability of the convict in imposing the fine.

This flexibility directly aims to address the problem of inflation and "chronic arrears" and to humanize punishment. However, this flexibility can also create new challenges, such as potential disparities in judges' decisions if the guidelines for applying the categories and considering the ability of the defendant are not uniform. Diversification of substitute punishment also requires adequate infrastructure and resources for effective implementation of supervision and community service. These reforms are a significant step forward, but their success will largely depend on how implementation guidelines are developed and enforced, and how the capacity of the justice system is enhanced.

Table 2: Key Comparison of Criminal Penalty Arrangements (Old Criminal Code vs. National Criminal Code)

Aspect	Old Criminal Code (Colonial Heritage)	National Criminal Code (Law number 1 of 2023)
Philosophy	Classical (Retributive). Focus on the act (<i>daad</i>) and retaliation.	Neo-Classical (Restorative & Rehabilitative). Balancing between the act and the perpetrator (<i>daad-dader strafrecht</i>).
Formulation of Nominal Fines	Static nominal, very low, and irrelevant to inflation. Changed <i>ad hoc</i> through regulations such as <i>Perma</i> Number 2 of 2012.	Uses a system of 8 categories of fines. The amount of the fine can be adjusted dynamically through a Government Regulation (PP) to address economic changes.
Consideration of the ability of the convicted person	Not explicitly regulated. Disproportionate fines are often a burden for low-income groups.	The judge is obliged to consider the convict's financial capability (income and expenses) in accordance with Article 80.
Payment Mechanism	Not explicitly regulated in the law.	Payment of fines can be made in installments in accordance with the court decision (Article 81).

Fine substitute (if not paid)	Only imprisonment.	There is diversification of substitute punishment: - Imprisonment - Supervision Punishment - Social work punishment (depending on the category of fines violated).
Legal Subject of Corporation	Not explicitly regulated as a subject of criminal fine.	Corporations are explicitly recognized as the subject of criminal acts that can be subjected to the principal punishment in the form of fines.

The shift towards greater flexibility in the National Criminal Code, especially with a diverse system of categories and substitute punishments, is designed to increase adaptability and humanization. However, this flexibility introduces potential trade-offs with consistency in sentencing outcomes. While individualization of justice is a lofty goal, the absence of highly detailed and uniformly applied guidelines for selecting categories or determining the appropriate amount within a category, coupled with subjective assessments of the "ability of the convicted person," may lead to unintended disparities. This suggests that the success of this reform will depend heavily on the development of robust judicial training and internal guidelines that balance flexibility with the need for predictability and equality before the law.

F. Normative and Philosophical Critique of the Reorientation of Criminal Fines

Although the National Criminal Code has made great efforts to improve the effectiveness and fairness of criminal fines, several normative and philosophical criticisms remain. In terms of deterrence effectiveness, fine punishment is still considered less effective than imprisonment, especially because the fine can be paid by a third party. This raises philosophical questions about whether the retributive goal (the offender feels the punishment) is met if the burden of punishment can be shifted.

In the context of distributive justice, fines tend to benefit the rich who can easily pay the fine, while for the less well-off, the fine remains a heavy burden that may lead to the imposition of a substitute punishment in the form of imprisonment. This indirectly creates a system where the poor are more vulnerable to imprisonment than the rich, even for the same criminal offense. Concerns have also been raised that the inability to pay fines may trigger offenders to commit new crimes in order to pay off their financial obligations. This justice dilemma suggests that the fine system, while more flexible, still faces fundamental challenges in balancing the goals of deterrence, retribution and social justice. This indicates that fines, while popular, are complex sanctions with far-reaching social consequences. Although the National Criminal Code has attempted to improve distributive justice by considering ability to pay, the inherent nature of monetary sanctions creates a persistent paradox. If the goal is truly fair deterrence and rehabilitation, the ability of fines to be paid by third parties or to disproportionately burden the poor (potentially leading to substitution with imprisonment) undermines principles of individual responsibility and fairness. The risk of "triggering offenders to commit new crimes to pay off their financial obligations" is a severe ripple effect, suggesting that fines, if not carefully calibrated and enforced, may inadvertently exacerbate social problems rather than solve them. This highlights the fundamental tension in using financial penalties as the primary form of punishment.

One of the most prominent criticisms of the reorientation of fines in the National Criminal Code is the reduction in the minimum amount of fines for some corruption offenses. Articles 603, 604 and 606 of the National Criminal Code set lower minimum fines compared to the old Corruption Eradication Law (*UU Tipikor*). For example, the minimum fine for corruption that harms state finances (Article 603 of the National Criminal Code) is reduced from Rp 200 million to Category II (Rp 10 million). In fact, the elimination of minimum fines in several articles, such as Article 606 section (2) of the National Criminal Code which replaces Article 11 of the Anti-Corruption Law.

This reduction in sanctions has the potential to weaken the deterrence effect against corruption, is disproportionate to state losses which are often massive, and can benefit corruptors. This contradicts the spirit of criminal law reform that claims a more progressive and humanist paradigm, but instead weakens sanctions for extraordinary crimes such as corruption that harm the wider community. In addition, the issue of *lex specialis derogat legi generali* arises due to the adoption of corruption articles into the general Criminal Code. Although the National Criminal Code generally adheres to this principle, the transfer of key articles from the specific Anti-Corruption Law into the general Criminal Code can create legal uncertainty and potential confusion in law enforcement. This reduction in sanctions can be caused by a variety of factors, including political lobbying or philosophical differences in the formulation of corruption crimes. However, the impact is a potential setback in the fight against corruption and an erosion of public confidence in the legal system. This critique highlights that while there is a general philosophical reorientation, its application to specific, sensitive crimes may generate controversy and threaten the larger goals of criminal law reform itself. This critique

Normative and Philosophical Analysis of the Reorientation of Criminal Fine Sanction Arrangement in Law Number 1 of 2023

represents the most significant contradiction in the National Criminal Code. While the overall philosophy promotes humanization and progressive justice, the weakening of sanctions for corruption directly undermines public trust and the stated national commitment to eradicating exceptional crimes. This suggests a potential mismatch between the philosophical aspirations of the Criminal Code as a whole and the specific political or practical considerations that influenced the formulation of corruption-related provisions. This raises critical questions about policy cohesion and whether the pursuit of a "humanist" approach inadvertently sacrifices the deterrence required for high-impact economic crimes, potentially eroding the legitimacy of law reform itself.

To further evaluate the proportionality and fairness of criminal fines in the National Criminal Code, a comparison with the concept of day fines in other jurisdictions is relevant. The concept of day fines, which is common in Continental Europe and Latin America, sets a fine amount that is proportional to the offender's financial means (usually daily income) and the seriousness of the offense. The aim of day fines is to achieve equal deterrence for offenders of different wealth levels and communicate sanctions more fairly. In the United States, traditional fines tend to be "fixed fines" based on the type of crime, not the ability to pay, although there have been day fines pilot projects that have shown increased revenue and fairness.

A comparison with Portugal's fine system shows that Indonesia, with its detailed system of maximum nominal categories that are often irrelevant in practice, differs from Portugal where fines are tailored to income and applied more frequently. The ideal concept of a fine is one that matches the economic conditions of the offender.

Indonesia's category system, although more flexible than the old nominal fines, has not yet fully adopted the day fines mechanism which multiplies the unit of punishment (based on the seriousness of the crime) by the unit value (based on daily income). This means that Indonesia is in the middle of the spectrum between rigid fixed fines and fully proportional day fines. The National Criminal Code has taken an important step towards distributive justice by considering the ability to pay. However, to achieve a higher level of proportionality and deterrent effectiveness such as day fines, Indonesia may need to consider a more explicit mechanism of linking fines to the offender's real income, rather than just general "ability". This would help address the criticism that fines still benefit the rich and burden the poor.

CONCLUSIONS

The reorientation of criminal fine sanctions in Law Number 1 of 2023 marks a pivotal moment in Indonesia's legal landscape, signifying a deliberate move away from the colonial-era, purely retributive Criminal Code. This new National Criminal Code embodies a neo-classical philosophy that integrates restorative, corrective, and rehabilitative justice, deeply influenced by victimology and the values of Pancasila. The introduction of an eight-category fine system is a pragmatic response to economic shifts and inflation, aiming for a more adaptive and relevant penalty framework. Crucially, the mandate for judges to consider the convict's financial capacity (Article 80) is a significant stride towards realizing distributive justice, mitigating the "prison for the poor" criticism that plagued the old system. Furthermore, the diversification of substitute mechanisms—including imprisonment, supervision, or community service—reflects a progressive effort to humanize punishment, reduce prison overcapacity, and promote social reintegration. The explicit recognition of corporations as subjects of criminal fines with substantial amounts also underscores the modernizing intent of the law.

Despite these commendable advancements, the reorientation is not without its significant normative and philosophical criticisms. A primary concern revolves around the reduction in minimum fines for certain corruption offenses (e.g., Articles 603, 604, and 606), which arguably weakens their deterrent effect and contradicts the national commitment to eradicating extraordinary crimes. This creates a philosophical tension within the new Code, as a seemingly progressive and humanist approach appears to compromise the fight against corruption, potentially eroding public trust and the legitimacy of the legal reform itself. The inherent nature of monetary sanctions also means that while the Code attempts to consider ability to pay, fines can still be disproportionately burdensome for the less affluent, potentially leading to substitute imprisonment, thereby maintaining a semblance of the "prisons for the poor" dilemma. The ability for fines to be paid by third parties further raises questions about whether the retributive goal of punishment is truly achieved, as the direct impact on the offender can be diluted, hindering rehabilitation and personal responsibility.

Law Number 1 of 2023 represents a significant and largely positive leap forward in reorienting Indonesia's criminal fine sanction arrangement. It embodies a more humane, adaptive, and just approach to punishment, signaling a clear departure from its colonial past. However, the path to full realization is fraught with challenges, particularly in reconciling the philosophical aspirations with the pragmatic realities of implementation, especially concerning high-impact crimes like corruption. The effectiveness of this reform will ultimately be determined by the extent to which these criticisms are addressed and how diligently the supporting mechanisms and mindset shifts are cultivated within the Indonesian legal system.

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