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Fine as a Preventive and Repressive Measure in Economic Crime

Palupi Rantau
Universitas Jenderal Soedirman
✉ palupi.rantau@unsoed.ac.id

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Abstract
A fine is one of the forms of sanctions that is functioning in criminal law as an instrument of prevention and repression in Indonesian criminal law. Its effectiveness is often questionable because the implementation of fines is often incomparable with state losses or perpetrator profits, and the substitute imprisonment has a weakening deterrent effect. Many theories emphasize that fines should be proportional to the offender's benefit to create a real deterrent effect. This research uses the normative law method with the conceptual and legislative approaches. Primary law material includes the old criminal code, the newest criminal code, and laws that are specialized in the economy field. Secondary law material in the form of literature such as article journals and decisions of relevant courts. Analysis is done in a descriptive-analytical way to compare the construction of the normative fine with its implementation in practice. Research results show that the new Criminal Code presents updates through system category fines and criminal regulations for corporations, which are more normative and progressive compared to the old Criminal Code. From a preventive aspect, fine potential prevents crime economy if set in a way proportional to the loss or profit of the perpetrator. However, in practice, its effectiveness is still weak due to the small consequence magnitude relative to the small fine as well as a weakness in the mechanism of execution. From a repressive aspect, fines are capable of punishing perpetrators and recovering part of the loss but often only become symbolic punishment. Because the perpetrator can replace it with criminal prison or confinement. Thus, the effectiveness of fines in action in the criminal economy still depends very much on consistent law enforcement, nominal proportionality, and firm policy execution in order to be able to function as an instrument for optimal prevention and action. Based on the results of the study, it is recommended that the fine settings be adjusted to reformulate the proportional magnitude of the loss and profit of the perpetrator.

Keywords: criminal sanction; fine; economic crime.

Introduction

A fine is one of the criminal types that was set in Indonesian criminal law. Both in the Indonesian Criminal Code and in the special law. A fine started from the connection of civil law, namely when someone was harmed by other people, they may require the compensation.[1] A fine in the world of criminal law science is still relatively small. In the society, they consider that a fine is the lightest criminal punishment. Finally, fines are often considered ineffective, especially because there is a mechanism for converting them into imprisonment if the convicted person is unable to pay the fine. Previous studies have mostly focused on fines for

[1] Ferdricka Nggeboe, "Suatu Tinjauan Tentang Pidana Denda Dalam Hukum Pidana Positif Indonesia Dan Rancangan KUHP," *Legalitas: Jurnal Hukum* 2, no. 1 (2012): 86–105, https://doi.org/10.33087/legalitas.v2i1.106.

minor offenses, such as traffic violations or general crimes. However, fines also apply to economic crimes such as corruption, money laundering, capital market crimes, and corporate crimes.

Economic crime is one of the crime types that is impactful for the national life and the country. Economic crimes not only harm the state's finances but also disrupt the country's stability, undermine public trust, and weaken the legitimacy of the law. In Indonesia, many cases of economic crimes such as corruption, money laundering, and tax evasion still occur frequently. The legal instrument used to combat economic crimes is fines. In the Indonesian legal system, fines are regulated in the criminal code and specific laws such as the corruption law, money laundering law, and taxation law. A fine is considered more flexible than imprisonment. This is because the fine can contribute to the recovery of state finances and serve as a preventive and repressive instrument.

Preventively, fines are expected to have a deterrent effect so that offenders will potentially avoid committing economic crimes. Repressively, a fine is expected to punish the offender fairly while recovering some losses incurred. However, in practice, the fines imposed by law are considered disproportionate to the losses caused by economic crimes. In some cases, defendants prefer to serve prison because it is lighter than paying the fines. [2] This phenomenon raises a serious issue, namely that fines have lost their deterrent effect as a means of prevention and punishment.

These economic crimes have social impacts on society, as the loss of public trust and the economic crime practices reduce public confidence in public institutions and the government. [3] They exacerbate social injustice and economic inequality, and this growing inequality is strongly linked to an increase in opportunities for other crimes and a decline in social cohesion. [4] The decline in the quality of public services, budget misuse, public project corruption, or embezzlement reduces the actual budget for health, education, and infrastructure services that are most needed by the lower-middle class. The social cost and nonmonetary reputation losses for victims in the digital market—fraud damages the reputation system, thereby reducing market efficiency. [5]

Polinsky and Shavell state that fines should ideally be set at a minimum equal to the offender's benefit or even higher in order to create a deterrent effect.[8] Fines

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[2] Mahrus Ali et al., "Is Criminal Fine in Economic Legislations Effective? Evidence from Indonesia," *Cogent Social Sciences* 8, no. 1 (December 2022), https://doi.org/10.1080/23311886.2022.2068270.

[3] Sean Richey, "The Impact of Corruption on Social Trust," *American Politics Research* 38, no. 4 (July 2010): 676–90, https://doi.org/10.1177/1532673X09341531.

[4] Benoît De Courson and Daniel Nettle, "Why Do Inequality and Deprivation Produce High Crime and Low Trust?," *Scientific Reports* 11, no. 1 (January 2021): 1937, https://doi.org/10.1038/s41598-020-80897-8.

[5] Qingquan Xin, Jing Zhou, and Fang Hu, "The Economic Consequences of Financial Fraud: Evidence from the Product Market in China," *China Journal of Accounting Studies* 6, no. 1 (January 2018): 1–23, https://doi.org/10.1080/21697213.2018.1480005.

are considered more efficient than imprisonment because they do not incur high social costs. [6] Certainly, enforcement is more important than the amount of the fine, because large fines without certainty of execution do not have a preventive effect. [7] This finding is strengthened by Teodorescu, who proves that the frequency of enforcement is more influential than the severity of sanction. [8]

Law number 1 of 2023 (the new KUHP) provides more scope for the application of fines. This includes provisions on maximum limits and regulation related to the fine category system. However, experts believe that this new formulation still leaves room for debate, such as the proportionality of fines, the ability of offenders to pay, and the mechanism for enforcement if fines are unpaid. [9] In the complex realm of economic crimes, policies related to fines must be designed so that they are not merely a formality but also have a deterrent effect. Studies have shown that fines for economic crimes in Indonesia are considered ineffective.

The provisions of fines in the new criminal code (KUHP) represent a significant reorientation. Fines are confirmed as the primary punishment, and a system of fines has been introduced that is nominally higher than in the old criminal code (KUHP). In terms of design, this step is intended to strengthen both the prevention function (prevention through deterrence) and the repressive function (reduction of illegal profit and recovery of losses). [10] However, various studies show that the normative framework is more advanced, and the guarantee that the preventive and repressive functions will actually be achieved is still conditional on the nominal design, consistency of enforcement, and execution mechanisms. As long as the imprisonment in default of payment of a fine is still easily accessible, offenders (especially individuals) may choose to serve a short prison term rather than pay, thereby rendering the financial repressive function illusory and weakening the preventive function. [11] On the other hand, the discourse on fines in the new Criminal Code can be efficient and restorative if it is accompanied by due process, transparency, and strict oversight of conflicts of interest. Otherwise, it risks delegitimizing prevention. The evidence from Indonesia shows a problem of under-deterrence, with nominal fines in many

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[6] Eberhard Feess et al., "The Impact of Fine Size and Uncertainty on Punishment and Deterrence: Theory and Evidence from the Laboratory," *Journal of Economic Behavior & Organization* 149 (May 2018): 58–73, https://doi.org/10.1016/j.jebo.2018.02.021.

[7] R. Barry Ruback et al., "Restitution Payment and Recidivism," *Criminology & Public Policy* 17, no. 4 (November 2018): 789–813, https://doi.org/10.1111/1745-9133.12401.

[8] Kinneret Teodorescu et al., "Frequency of Enforcement Is More Important than the Severity of Punishment in Reducing Violation Behaviors," *Proceedings of the National Academy of Sciences* 118, no. 42 (October 2021), https://doi.org/10.1073/pnas.2108507118.

[9] Herman Herman and Fokke J. Fernhout, "Maximum Limitation of Fines for Economic Crimes In Law Number 1 of 2023," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 2 (August 2023), https://doi.org/10.29303/ius.v11i2.1261.

[10] Herman and Fernhout.

[11] Ni Putu Rai Yuliartini, "Eksistensi Pidana Pengganti Denda Untuk Korporasi Dalam Pembaharuan Hukum Pidana Indonesia," *Jurnal IKA* 14, no. 1 (2016), https://doi.org/https://doi.org/10.23887/ika.v14i1.8336.

sectoral regimes incommensurate with the scale of the offender's losses/gains.[12] Weak enforcement of payments and imprisonment in default of payment of a fine, thereby negating the deterrent effect of financial sanctions.[13]

Rahmat's research in 2020 found that corruption cases did not have optimal implementation, even though provisions have been made regarding compensation and fines.[14] This is due to legal gaps and weaknesses in law enforcement. In addition, Sipayung highlighted in 2024 that the concept of fines for peace in the new criminal code (KUHP) still needs to be tested for effectiveness, especially in ensuring justice for the general community.[15] Mahrus Ali's research in 2020 shows that the level of fines imposed does not follow the rules and is not the same for individual and corporate offenders without adjusting for the characteristics of the offenders and the offense. As a result, the enforcement of fines by public prosecutors is ineffective because offenders prefer to serve short prison sentences rather than pay the fines to the state treasury.

Based on this description, there are disparities between the normative construction of fines and their practical implementation. Therefore, a normative analysis of the effectiveness of fines in economic crimes is relevant. To emphasize its preventive and repressive functions and also to contribute conceptually for the formulation of criminal law policies that are adaptive, fair, and appropriate to the context of economic crime challenges in Indonesia. The novelty of this research lies in its normative-prescriptive approach, which attempts to link theories of justice (Rawls and Aristotle) with legal economic analysis.[16] (Polinsky & Shavell) said that to formulate a deterrence- based fine calibration formula that can be used operationally by judges or legislators. This formula is expected to be a conceptual innovation in determining the minimum limits for fines that are rational, fair, and effective against economic crimes.

Research Problem

Based on this background, the research questions in this study are: first, whether the fines stipulated in the criminal code (KUHP) have been able to guarantee a preventive and repressive function against economic crimes. Second, how is the

[12] Baren Sipayung et al., "Denda Damai Dalam Tindak Pidana Ekonomi: Perspektif KUHP Baru Dan Perkembangan Internasional," *JIIP - Jurnal Ilmiah Ilmu Pendidikan* 8, no. 2 (February 2025): 2014–21, https://doi.org/10.54371/jiip.v8i2.7014.
[13] Ali et al., "Is Criminal Fine in Economic Legislations Effective? Evidence from Indonesia."
[14] Diding Rahmat, "Formulasi Kebijakan Pidana Denda Dan Uang Pengganti Dalam Penegakan Tindak Pidana Korupsi Di Indonesia," *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 1 (April 2020): 79, https://doi.org/10.29303/ius.v8i1.686.
[15] Sipayung et al., "Denda Damai Dalam Tindak Pidana Ekonomi: Perspektif KUHP Baru Dan Perkembangan Internasional."
[16] A.Mitchell Polinsky and Steven Shavell, "The Optimal Use of Fines and Imprisonment," *Journal of Public Economics* 24, no. 1 (June 1984): 89–99, https://doi.org/10.1016/0047-2727(84)90006-9.

effectiveness of fines in the economic crimes that are considered from the role as a preventive and repressive measure?

Research Methodology

This research uses a normative legal method with a focus on analyzing the regulation of fines in economic crimes. The approach used in this study is a legislative and conceptual approach, namely by examining law number 1 of 1946 concerning the Criminal Code (KUHP), law number 1 of 2023 concerning the Criminal Code, and examining Polinsky and Shavell's deterrence economics theories and criminal law doctrines related to the preventive and repressive functions of fines. The legal material used is primary legal material in the form of laws and regulations and secondary legal material in the form of literature, journal articles, and previous research. The data was obtained through a literature review, in which the researchers examined various primary and secondary legal documents. In addition, data was also obtained through online searches on official government websites. The data was presented using descriptive, analytical, and prescriptive methods to reveal the disparities between norms and practices, as well as to formulate recommendations for strengthening criminal law policies that are more effective and contextual in dealing with economic crimes.

Discussion

In modern criminal law theory, economic crimes are understood as highly complex crimes because they involve moral, social, and systemic dimensions. The retributive approach emphasize the importance of punishment commensurate with violations of public trust and sociap harm, while utilitarian theory focus on prevention through deterrence. The economic view of criminal law as created by Polinsky and Shavell[17]. The effectiveness of fines depends heavily on the balance between illegal profit, the probability of enforcement, and the level of social harm.[18] Therefor, the monimun prespective fine must be calibrated rationally so that the cost of the offense is greater than the benefits obtained by the perpetrator, thereby optimally achieving the preventive and repressive functions of criminal law. Criminal justice in economic matters must be responsive to the social context and corporate behavior in order to achieve substantive justice. An integrative approach combines economic and social analysis in determining the proportionality of fines to the systemic impact of an economic crime.[19] Therefore, contemporary criminal law theory demands that the formulation of economic

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[17] Polinsky and Shavell.

[18] Feess et al., "The Impact of Fine Size and Uncertainty on Punishment and Deterrence: Theory and Evidence from the Laboratory."

[19] Monica Violeta Achim et al., "The Impact of the Development of Society on Economic and Financial Crime. Case Study for European Union Member States," *Risks* 9, no. 5 (May 2021): 97, https://doi.org/10.3390/risks9050097.

sanctions should not only be punitive in nature, buta also reinforce social justice, economic efficiency, and public trust in the law.

1. Fines in The New Criminal Code as a Guarantee of Preventive and Repressive Functions against Economic Crimes

The criminal code brings importance changes to the criminal justice system, one of which is the regulation of fines. Economic crimes such as a corruption, banking crimes, and money laundering are generally characterized by financial losses, corporate crimes, and systemic impact on society and state. Therefore, the effectiveness of fines is tasted in two functions, namely the preventive function , in the case, it is able to deter individuals/corporations from committing violations. The respressive function, in the sense that it is able to punish perpetrators fairly, recover losses to the state/community and enforce the law.

In the New Criminal Code, namely in Article 65, fines are included in the category of basic penalties alongside imprisonment. The formulation of the equivalence of imprisonment and fines is based on John Rawls' theory of justice and Aristotle's theory of justice.[20] The Criminal Code has explicitly abandoned the retributive approach that emphasizes imprisonment and has begun to adopt conflict resolution based on restorative justice and rehabilitation. The main objective is to achieve corrective, restorative, and rehabilitative justice. Fines are not only a means of retribution, but also an instrument to assist in the recovery of victims through compensation, with the ability to pay being taken into consideration in the rehabilitation of perpetrators.[21] This makes fines more than just a "cost to be paid," but rather part of the process of achieving more comprehensive and humane justice in line with the objectives of modern criminal punishment. One important innovation in the reorientation of fines in the Criminal Code is the introduction of a categorization system. Article 79 paragraph (1) details fines into eight categories.

Table 1. Categories of fines according to Law Number 1 of 2023

Category	**Maximum 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 paragraph (1) of Law Number 1 of 2023

[20] Adami Chazawi, *Kejahatan Terhadap Benda* (Malang: Bayu Media, 2006).
[21] Anugrah R'lalana Sebayang, Heni Siswanto, and Sunaryo Sunaryo, "Normative and Philosophical Analysis of the Reorientation of Criminal Fine Sanction Arrangement in Law Number 1 of 2023," *International Journal of Social Science and Human Research* 08, no. 08 (August 2025), https://doi.org/10.47191/ijsshr/v8-i8-18.

From a preventive perspective, fines are expected to be a rational means of prevention because they discourage potential perpetrators from committing crimes by making them consider the risk of greater financial losses compared to the profits from economic crimes. However, the effectiveness of this preventive measure is still questionable if the amount of the fine is not proportional to the economic value of the crime or if the law enforcement system is inconsistent in handing down sentences that have a deterrent effect. From a repressive standpoint, fines are regulated as sanctions that can directly harm perpetrators by cutting off the economic profits from crime while preventing them from repeating their actions. However, there are serious challenges, such as limitations in the mechanism for enforcing payment of fines, the potential for replacing fines with imprisonment, and the possibility for large corporations to remain able to pay fines without losing their financial strength.

Table 2. Comparison of Fines: Old Criminal Code vs. New Criminal Code

Aspect	Old Criminal Code (Wetboek van Strafrecht)	New Criminal Code (Law No. 1 of 2023)
Legal basis	Articles 10 and 30 of the Old Criminal Code	Articles 66 to 85 of Law No. 1 of 2023
Position	Fines as the main punishment	Remains the main punishment, but reinforced with a fine category system
Amount of fines	Very small (colonial legacy)	Determined through fine categories I–VIII, from IDR 1,000,000 to IDR 50,000,000,000 (Article 79 of the New Criminal Code)
Substitute for fines	Imprisonment in lieu of fines (Article 30 of the old Criminal Code)	Can be replaced with community service or imprisonment in lieu of fines, which is more flexible and progressive
Inflation adjustment	Uses a multiplier rule (Law No. 18 of 1960, Perma No. 2 of 2012 → multiplied by 1,000)	No multiplier is needed, as the value of fines has been adjusted to modern economic conditions
Preventive function	Weak, as small amounts do not have a deterrent effect (especially for corporations)	Stronger, as the value of fines is significant and proportional to the severity of the crime
Repressive function	Exists, but often considered a "symbolic punishment"	More effective, because judges have the flexibility to impose fines according to category
Corporate context	Not specifically regulated → difficult to apply to legal entities	There are clear regulations regarding corporate criminal liability, including fines (Articles 118-120 of the New Criminal Code)

Source: The Old Criminal Code and Law Number 1 of 2023

Although the new Criminal Code introduces provisions on fines and compensation for economic crimes, recent studies have found that these provisions are not yet optimal[22], as the amount of fines often does not reflect the economic losses and the enforcement procedures do not guarantee actual recovery. Meanwhile, alternatives such as settlement fines are considered to have restorative and efficient potential, provided that they are accompanied by adequate regulation and transparency.[23] Throughout 2024, the Supreme Court and

[22] Teng Junaidi Gunawan, "Kajian Limitasi Maksimum Sanksi Pidana Kejahatan Ekonomi - Perspektif Analisis Ekonomi Terhadap Hukum," *Jurnal Hukum Pidana Dan Kriminologi* 3, no. 2 (November 2022): 53–71, https://doi.org/10.51370/jhpk.v3i2.84.
[23] Sipayung et al., "Denda Damai Dalam Tindak Pidana Ekonomi: Perspektif KUHP Baru Dan Perkembangan Internasional."

law enforcement agencies stated that the value of fines and compensation ordered to be paid by defendants reached tens of trillions of rupiah.[24] This shows that courts often impose significant financial penalties in corruption and economic cases. However, law enforcement data shows weaknesses in the form of an increase in economic cases, asset recovery issues, and inconsistencies in sanctions and fine payments. In addition, Supreme Court rulings show that fines are often replaced with imprisonment or other mechanisms when they are not paid, so that their execution is often hampered. This raises the question of whether deterrence is truly achieved, especially against large corporations that are able to bear the financial burden without losing their operational structure.

In the old Criminal Code, fines often lost their effectiveness, both preventively and repressively. This was because the fines were very small, still following the colonial standards of the past. For example, the maximum fine for theft was only Rp. 900, and in practice, fines and compensation payments were often ineffective if the enforcement mechanism was weak, as perpetrators preferred to serve a prison sentence rather than pay their financial obligations.[25] This resulted in fines not having a deterrent effect, especially for perpetrators with high financial capacity or for corporations. It was not uncommon for judges to prefer to impose substitute imprisonment, which actually added to the burden on correctional institutions. Thus, the objective of punishment through fines was not achieved and instead resulted in imprisonment, which led to overcapacity in correctional institutions.

The new Criminal Code attempts to address this problem by introducing a more realistic range of fines, from IDR 1 million to IDR 5 billion, and strengthening the position of fines as an instrument of loss recovery. In the context of economic crimes, the new Criminal Code also introduces the concept of settlement fines, which allow cases to be resolved through direct compensation payments, although there is still criticism regarding the potential for abuse.[26] In addition, the new Criminal Code recognizes corporate criminal liability, including a mechanism for fines as a substitute for fines so that companies are not merely redeeming their mistakes with money, but are actually encouraged to make structural improvements.[27] Judges impose heavier fines on companies with higher misconduct scores, in accordance with federal sentencing guidelines and the focal

[24] Andi Saputra, "Tok! MA Jatuhkan Vonis Uang Pengganti-Denda Capai Rp 87 Triliun Di 2024," Dandapala, 2025, https://dandapala.com/article/detail/tok-ma-jatuhkan-vonis-uang-pengganti-denda-capai-rp-87-triliun-di-2024.
[25] Rahmat, "Formulasi Kebijakan Pidana Denda Dan Uang Pengganti Dalam Penegakan Tindak Pidana Korupsi Di Indonesia."
[26] Sipayung et al., "Denda Damai Dalam Tindak Pidana Ekonomi: Perspektif KUHP Baru Dan Perkembangan Internasional."
[27] Ni Putu Rai Yuliartini, "Eksistensi Pidana Pengganti Denda Untuk Korporasi Dalam Pembaharuan Hukum Pidana Indonesia."

concerns framework.[28] Disparities between criminal provisions in the economic sector have resulted in legal uncertainty in the enforcement of economic crime laws.[29]

The effectiveness of fines in the new Criminal Code remains dependent on the proportionality of the amount of the fine and the success of its enforcement. The maximum penalty for economic crimes, including fines, is still often less than the profits gained by the perpetrator.[30] This means that the incentive to commit violations remains. In the context of environmental crimes, fines are often not commensurate with the ecological damage caused, and therefore do not have a deterrent effect or lead to meaningful restoration.[31] The criminal justice system has a significant influence on criminal activity. Increasing the risk of arrest and punishment is more effective in reducing crime than increasing the severity of expected penalties.[32]

Therefore, the regulation of fines in the new Criminal Code does represent a step forward in providing a more flexible and progressive instrument. However, further study is needed regarding the amount, mechanism of application, and consistency of law enforcement so that its preventive and repressive functions can truly be realized in the context of economic crimes. As a new contribution, this study proposes a prescriptive minimum fine formula model:

$$minimum\ fine = \frac{illegal\ gain}{represive\ probality}\ x\ social\ damage$$

This model is grounded in the deterrence economics theory of Polinsky & Shavell, which holds that an effective punishment must wipe out the expected gain from the offense and create a higher expected cost to deter wrongdoing.[33] Operationally, this approach provides an objective yardstick for judges to avoid sentencing disparity and ensure proportionality among the offender's gain, the state's potential loss, and the risk level of law enforcement. This conceptual innovation has not been systematically discussed in Indonesian criminal-law scholarship, making it the article's principal novelty. An application of the formula can be seen in the District Court of Depok Decision No. 83/Pid.B/2018/PN.Dpk, where Andika Surachman and Anniesa Hasibuan were convicted of fraud and money laundering, later affirmed by the Supreme Court on cassation in Decision

[28] Emily M. Homer and George E. Higgins, "Corporation Blameworthiness and Federal Criminal Fines," *Journal of Financial Crime* 27, no. 2 (January 2020): 413–22, https://doi.org/10.1108/JFC-01-2019-0010.
[29] Muhammad Fatahillah Akbar, "The Urgency of Law Reforms on Economic Crimes in Indonesia," *Cogent Social Sciences* 9, no. 1 (December 2023), https://doi.org/10.1080/23311886.2023.2175487.
[30] Junaidi Gunawan, "Kajian Limitasi Maksimum Sanksi Pidana Kejahatan Ekonomi - Perspektif Analisis Ekonomi Terhadap Hukum."
[31] Fiska Maulidian Nugroho, "Mengganti Kerugian Ekologi Melalui Perspektif Pidana Denda," *Journal of Economic and Business Law Review* 4, no. 2 (November 2024): 156, https://doi.org/10.19184/jeblr.v4i2.53373.
[32] Maurice J. G. Bun et al., "Crime, Deterrence and Punishment Revisited," *Empirical Economics* 59, no. 5 (November 2020): 2303–33, https://doi.org/10.1007/s00181-019-01758-6.
[33] Teodorescu et al., "Frequency of Enforcement Is More Important than the Severity of Punishment in Reducing Violation Behaviors."

No. 3096 K/Pid.Sus/2018.[34] The penalties/fines imposed were: Andika, 20 years plus a fine of IDR 10 billion; Anniesa, 18 years plus a fine of IDR 10 billion; and Kiki, 15 years plus a fine of IDR 5 billion. The funds collected/the victims' losses—which serve as the benchmark for illegal gain (G)—were IDR 900–905 billion (a figure consistently reported and debated in the asset-forfeiture controversy).

In other words, under realistic values of p (5–20%), the fines imposed are far below the economic-deterrence standard needed to eliminate the expected gain. This also explains why, absent large-scale asset recovery and imprisonment alongside an increase in p, purely financial deterrence from fines is hard to achieve. The policy implication of these calculations is that fines such as IDR 10 billion per defendant make under-deterrence unavoidable in cases worth hundreds of billions, thereby necessitating reliance on confiscation. To approximate deterrence per the theory, maximize asset forfeiture, channel recovery to victims, and raise the probability of enforcement (through PPATK/banking cooperation and cross-border asset tracing). Sentencing in money-laundering cases should be oriented toward the effectiveness of sanctions: not only punishing to deter, but ensuring the state is not harmed by the choice of sanctions.[35] While the new Criminal Code is more progressive than the old one, the effectiveness of fines still hinges on strong enforcement commitment and firm, consistent execution policies.

2. Effectiveness of fines in economic crimes viewed through their preventive and repressive roles

A fine is one form of punishment recognized in Indonesia's criminal-law system. In the old Criminal Code (KUHP), the fine was one of the principal punishments alongside the death penalty, imprisonment, confinement, and custody. The new Criminal Code retains fines as a principal punishment, emphasizing categorical fine levels. This indicates the legislature still views fines as a relevant tool for combating crime, including in the realm of economic offenses. Economic crimes are generally marked by a profit motive. Normatively, fines are appropriate because their financial impact reduces unlawfully obtained gains. Theoretically, the effectiveness of fines is measured by how well they serve preventive (deterring) and repressive (punitive) functions.

Preventively, fines aim to produce a deterrence effect so individuals or corporations avoid breaching economic laws. Economic analyses of crime posit that prevention is effective when the expected sanction exceeds the expected gain.[36] Empirical studies, however, show it is not only the size of the fine that

[34] Mahkamah Agung, "Putusan Kasus First Travel," Direktori Putusan Mahkamag Agung, 2025, https://putusan3.mahkamahagung.go.id/direktori/putusan/a19089ae61a718edb8cc2afde8b174b2.html.
[35] M. Ilham Wira Pratama, "Analisis Terhadap Sanksi Pidana Tindak Pidana Pencucian Uang (Perspektif Economic Analysis of Law)," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 3, no. 1 (March 2022): 48–56, https://doi.org/10.18196/ijclc.v3i1.12343.
[36] Polinsky and Shavell, "The Optimal Use of Fines and Imprisonment."

matters but also the consistency of enforcement. Teodorescu demonstrates that the frequency of enforcement exerts a stronger deterrent impact than severity alone.[37] The effectiveness of criminal sanctions remains a crucial challenge given enforcement difficulties such as complex fund-flow tracing, limited law-enforcement resources, and increasingly sophisticated methods used by offenders often operating within international networks.[38]

Fines are always formulated in conjunction with other criminal penalties, namely imprisonment, due to their nature as a primary form of punishment.[39] In the context of corporations, it is important to emphasize market-adjusted sanctions, whereby fines are adjusted according to the financial strength and market share of the corporation in order to have a proportionate deterrent effect.[40] When the proceeds of fines are transferred to the wider community, legal legitimacy and compliance increase.[41] On the repressive side, fines serve as a means of punishment that financially reduces the illegal profits of perpetrators and helps recover state losses. The new Criminal Code has established a more proportional system of fines, but in practice, they often remain symbolic punishments. This is due to weak enforcement mechanisms.[42]

Unrealistic fines actually increase the risk of recidivism because of the excessive financial burden on perpetrators with low economic capacity.[43] A reorientation of fines is needed so that they function not only repressively, but also restoratively and educationally, with enforcement based on proportionality.[44] Studies in Criminology & Public Policy reinforce this with evidence that effective restitution and fine payments can significantly reduce recidivism rates.[45] The deterrent effect is not only influenced by the amount of the fine, but also by the offender's self-control ability and moral intuition, so that fine policies need to consider psychological and social factors.[46] A fine system that does not take social inequality into account can create over-deterrence for vulnerable groups and

[37] Teodorescu et al., "Frequency of Enforcement Is More Important than the Severity of Punishment in Reducing Violation Behaviors."
[38] Hanif Fonda and Evita Isretno Israhadi, "The Effectiveness Of Criminal Sanctions As An Instrument Of Prevention And Enforcement In The Legal Framework Of Money Laundering Crimes," *Pemuliaan Keadilan* 2, no. 3 (August 2025): 152–61, https://doi.org/10.62383/pk.v2i3.1039.
[39] Nugroho, "Mengganti Kerugian Ekologi Melalui Perspektif Pidana Denda."
[40] Emmanuelle Auriol, Erling Hjelmeng, and Tina Soreide, "Corporate Criminals in a Market Context: Enforcement and Optimal Sanctions," *European Journal of Law and Economics* 56, no. 2 (October 18, 2023): 225–87, https://doi.org/10.1007/s10657-023-09773-w.
[41] Florian Baumann et al., "Fines as Enforcers' Rewards or as a Transfer to Society at Large? Evidence on Deterrence and Enforcement Implications," *Public Choice* 196, no. 3–4 (September 2023): 229–55, https://doi.org/10.1007/s11127-022-01000-5.
[42] Herman and Fernhout, "Maximum Limitation of Fines for Economic Crimes In Law Number 1 of 2023."
[43] Tyler Giles, "The Government Revenue, Recidivism, and Financial Health Effects of Criminal Fines and Fees," *SSRN Electronic Journal*, 2023, https://doi.org/10.2139/ssrn.4568724.
[44] Sebayang, Siswanto, and Sunaryo, "Normative and Philosophical Analysis of the Reorientation of Criminal Fine Sanction Arrangement in Law Number 1 of 2023."
[45] Ruback et al., "Restitution Payment and Recidivism."
[46] Helmut Hirtenlehner and Heinz Leitgöb, "Deterrence Perceptions, Self-Control Ability and the Moral Filter: Conceptualizing and Testing a Model of a Subsidiary Relevance of Deterrence," *Deviant Behavior* 45, no. 10 (October 2024): 1391–1418, https://doi.org/10.1080/01639625.2023.2298512.

under-deterrence for wealthy offenders, making distributive justice an important element in the design of fines.[47]

Other regulations that impose fines include the Corruption Crime Law, the Banking Law, the Consumer Protection Law, and the Business Competition Law. The regulation of fines in economic legislation is often ineffective due to inconsistencies, both in the determination of the amount and in the mechanism of execution.[48] The preventive function of fines emphasizes their role as a deterrent to crime. According to criminal law doctrine, general prevention is achieved when potential perpetrators realize that the potential losses resulting from punishment are greater than the profits from the crime. Therefore, fines must be designed in proportion to the losses incurred or profits obtained by the perpetrator.

Normatively, the application of maximum fines in the new Criminal Code raises issues. This is because it can weaken the preventive function as perpetrators may consider fines as a "business risk cost." For example, in a corruption case that caused the state to suffer losses of hundreds of billions of rupiah, the maximum fine is IDR 5 billion. This is not proportional to the losses caused by the corruption. Such a maximum limit has the potential to create injustice and weaken the deterrent effect of criminal law.[49] Legal economic analysis explains that crime will occur when the expected benefit exceeds the expected cost. In this context, fines serve to increase the expected cost.

However, if the fines are too small, the preventive function will fail. Conversely, if the fines are too high but law enforcement is weak, it can have a counterproductive effect in the form of bribery by officials. Therefore, fines must be balanced with effective law enforcement.[50] The repressive function of fines is evident when perpetrators of economic crimes are punished with sanctions that financially reduce their illicit gains. This is in line with the principle of retributive justice, namely that perpetrators must suffer punishment equivalent to the losses they have caused.

In Indonesia, the repressive effectiveness of fines is still hampered by the enforcement mechanism.[51] In many cases, if the fine is not paid, the perpetrator only serves a substitute prison sentence. As a result, perpetrators can choose a relatively light substitute punishment, while the economic losses are not recovered. For example, in the case of mega corruption at PT Asuransi Jiwasraya, the state's losses are estimated to reach more than IDR 16.8 trillion. The

[47] Giuseppe Dari-Mattiacci, Giovanni Immordino, and Francesco F. Russo, "Fines for Unequal Societies," *European Journal of Political Economy* 86 (January 2025): 102621, https://doi.org/10.1016/j.ejpoleco.2024.102621.
[48] Ali et al., "Is Criminal Fine in Economic Legislations Effective? Evidence from Indonesia."
[49] Herman and Fernhout, "Maximum Limitation of Fines for Economic Crimes In Law Number 1 of 2023."
[50] Antonio Acconcia, Marcello D'Amato, and Riccardo Martina, "Tax Evasion and Corruption: Endogenous Deterrence and the Perverse Effects of Fines," *Studi Economici*, no. 101 (March 2011): 31–53, https://doi.org/10.3280/STE2010-101002.
[51] Ali et al., "Is Criminal Fine in Economic Legislations Effective? Evidence from Indonesia."

defendants, including former company officials and private parties, were sentenced to life imprisonment, additional penalties in the form of compensation, and fines of IDR 1 billion. From a repressive perspective, the fines imposed are very small compared to the value of state losses, so the financial punishment is disproportionate. From a preventive perspective, the low fines are not enough to deter crime, especially for large-scale economic crimes.

Another case is the corruption case involving former Kutai Kartanegara Regent Rita Widyasari (Supreme Court Decision No. 152 PK/Pid.Sus/2021).[52] Rita was proven to have accepted gratuities and bribes amounting to more than Rp110 billion. In addition to a 10-year prison sentence, she was also sentenced to a fine of Rp600 million or a subsidiary 6 months imprisonment. From a repressive perspective, the fine is disproportionate to the value of the bribes/gratuities received. This shows that in practice, fines more often serve as a supplement to the main punishment, rather than as the main instrument for recovering losses or suppressing economic crime. The case of illegal fishing by foreign vessels based on the 2017 Tanjung Pinang District Court Decision.[53] Several foreign vessels caught fishing illegally were sentenced to fines of billions of rupiah. In this case, the fines were relatively effective in terms of repression, as the proceeds went to the state treasury and prevented other foreign vessels from committing similar violations. The preventive function was also more pronounced because the threat of high fines made ship owners consider the economic risks before committing violations.

Looking at the above case, it appears that fines are often ineffective because the amount of the fine is too small compared to the losses incurred by the state and the profits made by the perpetrators. This weakens their preventive and repressive functions. Meanwhile, fines in illegal fishing cases are relatively more effective because they are high, their enforcement is strict, and they are able to provide a deterrent effect while also recovering state losses. This explains that the effectiveness of fines in economic crimes is highly dependent on the proportionality of the fines, the seriousness of the authorities in enforcing them, and the consistency of judges in handing down verdicts. In European jurisdictions, fines imposed on corporations are often determined based on a percentage of the company's revenue or profits. The article Corporate criminals in a market context explains that the percentage system makes fines more repressive and proportional, thereby increasing their deterrent effect.[54] Normatively, Indonesia could consider a similar scheme to optimize its repressive function.

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[52] Mahkamah Agung, "Putusan Kasus Korupsi Mantan Bupati Kutai Kartanegara," Direktori Putusan Mahkamag Agung, 2025, https://putusan3.mahkamahagung.go.id/direktori/putusan/zaed1d72b9b050ee8495323135303039.html.

[53] Mahkamah Agung, "Putusan Kejahatan Perikanan Le Bao Toan," Direktori Putusan Mahkamag Agung, 2025, https://putusan3.mahkamahagung.go.id/direktori/putusan/ea44c69982d454541800a5e35f8e29b6.html.

[54] Auriol, Hjelmeng, and Søreide, "Corporate Criminals in a Market Context: Enforcement and Optimal Sanctions."

Based on the above explanation, it can be concluded that the effectiveness of fines is not only determined by the nominal amount or frequency of enforcement, but also by several factors, such as proportionality (between profits and fines), certainty of execution, the economic capacity of the perpetrator, social justice, and the effect on public morality. Therefore, a normative-prescriptive approach that combines economic deterrence theory with substantive justice is important to ensure that fines function effectively both preventively and repressively in the context of economic crimes in Indonesia.

Conclusion

Conceptually, this study bridges justice theory (Rawls–Aristotle) with legal economic analysis to formulate objective benchmarks for determining fair and effective minimum fines. In practical terms, the application of the model to case studies reveals a significant gap between actual fines and the fines needed to eliminate the profits of crime, so that reforms must be directed at: (i) calibrating fines based on $G/p \times f$; (ii) maximizing asset recovery and restitution; (iii) increasing p through strengthening enforcement and inter-agency cooperation; (iv) designing proportional corporate sanctions accompanied by governance improvement obligations; and (v) standardizing cross-sector sentencing guidelines to reduce disparities. Therefore, fines will serve not only as a symbolic measure, but as a real instrument for the prevention and prosecution of economic crimes, while also restoring losses and restoring public confidence in the law. The new Criminal Code seeks to reform the regulation of fines and promote preventive and restorative justice, yet its implementation remains weak. Although fines are recognized as a primary punishment, their deterrent and preventive functions are undermined by low nominal limits, inconsistent enforcement, and the ease of substituting imprisonment. As a result, fines often fail to reflect the true economic harm of crimes, allowing perpetrators, especially corporations to treat them merely as business costs. This under-deterrence erodes public trust, widens inequality, and weakens the legitimacy of the legal system. For corporations, sanctions should be market-adjusted and include governance reforms. By applying objective and proportional criteria, fines can evolve from symbolic penalties into effective instruments for prevention, enforcement, and the restoration of public confidence in the rule of law.

Fines in Indonesia’s new Criminal Code are normatively strengthened as a primary punishment and intended to support preventive and restorative justice. However, their effectiveness remains weak due to low maximum limits, disproportionate amounts compared to illegal profits, and inconsistent enforcement that allows substitution with imprisonment. These weaknesses reduce deterrence, especially for economically powerful offenders and corporations, causing fines to be treated merely as business costs. To make fines truly effective, reforms must ensure proportionality to illicit gains, strengthen enforcement, and integrate asset recovery and corporate sanctions based on financial capacity. By applying economic deterrence theory and justice principles, fines can function as real instruments of prevention, accountability, and legal trust restoration rather than symbolic penalties. Normatively, fines have a strong legal basis as a primary punishment in both the old and new Criminal Codes. However, their effectiveness as a preventive and repressive measure in economic crimes is still questionable. The preventive function is weak due to the maximum nominal limit, which is not proportional to the damage caused by the crime. The repressive function is also limited because the substitute imprisonment mechanism allows perpetrators to avoid financial responsibility. Thus, fines will only be effective if legal norms are designed proportionally, based on illegal profits, and enforced consistently. Without such reformulation, fines risk remaining a symbolic punishment rather than a real instrument in the prevention and prosecution of economic crimes.

Suggestion

This study recommends reformulating fines for economic crimes to be proportional to offenders' profits or losses, with percentage-based schemes for corporations. Enforcement must be strengthened through strict payment regulations, consistent application by law enforcement, and prevention of substitution with imprisonment. Corporate sanctions should include non-financial measures such as governance reforms or business restrictions. Fines should be calibrated using an economic deterrence model, ensuring expected sanctions exceed expected gains while harmonizing fine ceilings across legal regimes. Asset recovery and enforcement units must be integrated, supported by data-driven monitoring and periodic evaluation to maintain relevance. Ultimately, fines should function not only repressively but also restoratively, focusing on loss recovery, deterrence, and the promotion of sustainable compliance.

Reform fines so they are proportional to illicit gains or losses, with percentage-based schemes for corporations (turnover/profit/illegal gains). Raise statutory ceilings, harmonize sanctions across regimes, and adopt a national guideline for minimum fines using $G/p \times f$ (illegal gains ÷ enforcement probability × social-loss factor), allowing judicial discretion on f and limiting substitution with imprisonment in high-value cases. Use day-fines for individuals to align penalties with ability to pay, and add non-financial corporate sanctions (license limits, monitorship, mandatory governance improvements). Operationalize deterrence through sentencing guidelines that quantify G, p, f and ability to pay, and require a sanction package (fines + asset confiscation + restitution). Strengthen enforcement via an integrated asset-recovery/fine-enforcement unit, early collateral seizure, prosecutorial filings that include the $G/p \times f$ worksheet, and maximized domestic/cross-border recovery. Increase p with risk analytics, FIU cooperation, and public dashboards on fines imposed/collected and assets recovered. Build a decisions database linking fines to G, run regular policy evaluations, and embed restorative aims—prioritizing loss recovery and the preventive, educational function.

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