



The Effectiveness of Fines in Addressing Overcrowding in Correctional Institutions

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ABSTRACT

The problem of overcrowding or overcapacity in correctional institutions (Lapas) in Indonesia has reached a critical point, threatening the function of prisoner development and significantly burdening the state budget. This phenomenon is rooted in a prison-centric and retributive sentencing policy. This study aims to analyze the optimization of fines by judges as an alternative sentencing within the framework of Law Number 1 of 2023 concerning the Criminal Code (KUHP) to reduce prison occupancy rates. The research method used is normative juridical with a statutory and conceptual approach. The results show that Law Number 1 of 2023 has implemented a philosophical reorientation through Articles 51 and 52, which prioritize restorative justice and non-deprivation of liberty sanctions. Fines are positioned as a strategic instrument in line with the principle of *ultimum remedium* and recognition of living law. However, its implementation remains hampered by the retributive legal culture of law enforcement officials and the lack of technical regulations regarding the conversion of fines that do not result in imprisonment for low-income offenders. The study concluded that a transformation of judges' mindsets and strengthening of regulations on the execution of community service sentences as a complement to fines are necessary. The effectiveness of fines would not only reduce the physical burden on prisons but also create a more humane, proportional, and socially balanced criminal justice system.

INTRODUCTION

For many years, Indonesia's criminal justice system has faced a fundamental weakness: it has been overly formalistic, procedural, and highly dependent on imprisonment as a *premium remedium* (primary solution) for resolving criminal cases. This reliance on custodial punishment has generated a massive structural problem, namely overcrowding in correctional institutions (*Lembaga Pemasyarakatan* or prisons). Based on available data, the number of inmates currently far exceeds prison capacity, with occupancy rates increasing dramatically to more than 200 percent. This condition not only imposes a significant burden on the state budget but also creates humanitarian concerns, heightens the risk of conflict within prisons, and undermines the rehabilitative function of correctional institutions. These persistent issues have fostered public pessimism and reinforced the stigma that "the law is harsh toward the weak but lenient toward the powerful."

This systemic crisis demands a philosophical reorientation in criminal law enforcement. In contemporary criminal law discourse, legal scholars widely agree that a paradigm shift is necessary—from a rigid retributive approach focused on punishment toward restorative justice centered on recovery and reconciliation. Traditionally, the retributive model has positioned the state as the "primary victim," often neglecting the actual harm suffered by victims. In contrast, the restorative paradigm seeks substantive justice by prioritizing the restoration of relationships between offenders, victims, and society.

The momentum for this paradigm shift finds its strongest normative legal foundation in the enactment of Law Number 1 of 2023 concerning the Criminal Code (*Kitab Undang-Undang Hukum Pidana* or KUHP). This transformation is not merely textual but conceptual, particularly through the reformulation of sentencing objectives in Article 51 of the new Criminal Code. The article establishes that punishment is no longer intended as an instrument of retaliation but rather as a mechanism for resolving conflicts, restoring social balance, fostering peace within society, and encouraging remorse in offenders. This principle is reinforced by Article 52, which affirms that punishment must not degrade human dignity. Through these provisions, the new Criminal Code formally positions restorative justice as the core spirit of Indonesia's criminal justice system.

Furthermore, the restorative approach in the National Criminal Code is supported by recognition of the principle of material legality, namely the existence of *living law* within society. Article 2 paragraph (1) of the new Criminal Code explicitly states that the application of formal legality does not negate the validity of laws living within society that determine whether an act deserves punishment. This acknowledgment of *living law* legitimizes judges to consider local justice values that have long emphasized deliberation and restoration of communal harmony. In practice, *living law*-based settlements are closely associated with alternative sanctions outside imprisonment, such as compensation or fulfillment of customary obligations.

As a concrete manifestation of restorative sentencing objectives and *living law* principles, the new Criminal Code strengthens alternatives to imprisonment (*non-custodial sentences*), including the optimization of fines as criminal sanctions. Fines are now positioned as strategic instruments that align with principles of justice by emphasizing financial sanctions and restitution rather than physical confinement. At the same time, they provide a practical response to prison overcrowding. Fines offer flexibility in implementation and contribute to restoring social balance.

Although the doctrinal and normative foundations have been strengthened through Law Number 1 of 2023, the practical optimization of fines within judicial processes continues to face complex challenges. The primary obstacle no longer lies in the absence of regulations but in legal culture, which remains deeply rooted in retributive thinking. Historically, law enforcement officials have been oriented toward custodial punishment. In addition, socio-economic realities, such as offenders' inability to pay compensation or fines, present empirical challenges that cannot be overlooked.

Therefore, this article examines more deeply the policy of imposing fines by judges as a strategic alternative to addressing prison overcrowding, particularly within the framework of Law Number 1 of 2023. This study is expected to contribute to transforming the legal culture of law enforcement officials and strengthening regulatory implementation so that the ideals of restorative justice and alternative sentencing in Indonesia become not merely normative texts but effective and humane legal realities.

RESEARCH METHOD

1. Type of Research

This study employs normative juridical legal research (*legal research*), which focuses on examining legal principles and norms within positive law. This approach is used to analyze the synchronization between regulations concerning fines under Law Number 1 of 2023 and efforts to address the structural problem of prison overcrowding. The research applies both the statutory approach and the conceptual approach to examine the paradigm shift in criminal law.

2. Research Data Sources

The data used in this study consist of secondary data, which include:

a. Primary Legal Materials:

These consist of statutory regulations, particularly Law Number 1 of 2023 concerning the Criminal Code (*Kitab Undang-Undang Hukum Pidana* or KUHP).

b. Secondary Legal Materials:

These include scientific literature, legal journals, research findings, and articles related to restorative justice, correctional systems, and sentencing policies.

c. Tertiary Legal Materials:

These consist of legal dictionaries and encyclopedias used to clarify legal terminology applied in the study.

3. Data Collection Technique

Data collection was conducted through library research. Relevant legal materials were identified, reviewed, and recorded in relation to prison overcrowding

issues, statistical data showing prison occupancy rates exceeding 200 percent, and regulations concerning alternative sanctions outside imprisonment.

4. Data Analysis

The collected data were analyzed qualitatively using a descriptive-analytical method. The analytical steps included:

a. Data Reduction:

Selecting data relevant to the discussion of fines and prison overcrowding.

b. Legal Interpretation:

Interpreting provisions of the new Criminal Code to identify the *ratio legis* underlying the implementation of fines.

c. Deduction:

Drawing conclusions from general propositions (legal theories and regulations) toward specific applications (solutions to prison overcrowding problems).

RESULTS AND DISCUSSION

A. Regulation of Fines under Law Number 1 of 2023 as an Instrument for Reducing Prison Overcrowding

Law Number 1 of 2023 concerning the Criminal Code (*Kitab Undang-Undang Hukum Pidana* or National Criminal Code) introduces a fundamental shift in Indonesia's philosophy of punishment. From a *das Sollen* perspective, this regulation no longer places imprisonment at the center of law enforcement but instead adopts an integrative criminal law paradigm balancing legal certainty, justice, and social utility. This transformation is not merely technical but reflects a broader shift in legal values that prioritizes restoring relationships among offenders, victims, and society rather than focusing solely on punishment.

Historically, the colonial Criminal Code (*Wetboek van Strafrecht*) was strongly retributive, positioning the state as the "primary victim" and viewing physical suffering of offenders as the measure of justice. However, Law Number 1 of 2023, through Articles 51 and 52, fundamentally restructures sentencing objectives toward conflict resolution and the restoration of social harmony. Within this framework, fines gain theoretical justification as a more humane sanction because they take into account the actual losses experienced by victims, both material and immaterial. Furthermore, fines are comprehensively regulated under Articles 78 to 84, which explicitly govern their implementation. These provisions establish rules concerning asset seizure, alternative penalties, and the placement of imprisonment as an *ultimum remedium*. Consequently, the criminal law policy regarding fines under the new Criminal Code is intentionally designed to prevent the negative stigma associated with incarceration while contributing to victim recovery.

Judges hold full authority to maintain balance between protecting individual interests and safeguarding society through the application of the principle of equilibrium (*Evenwichtsbeginsel*). When judges impose fines instead of imprisonment, they effectively operationalize the *ultimum remedium* principle, positioning imprisonment as the last resort in criminal law enforcement. In addition, Article 2 of the National Criminal Code progressively recognizes the existence of *living law* within Indonesian society. This integration seeks to

accommodate values of deliberation and humanity, considering that many customary legal systems emphasize sanctions in the form of fines or compensation rather than physical confinement. Therefore, strengthening fines represents a tangible effort toward the “indigenization” of criminal law aimed at achieving substantive justice.

This condition reflects a deeply concerning reality, as prison occupancy rates in Indonesia have exceeded capacity by more than 200 percent. This figure is a direct consequence of prison-centered sentencing policies, which have ultimately generated various secondary problems, including inhumane detention conditions, heightened risks of conflict, and significant state budget inefficiencies. Fines emerge as a strategic solution to reduce the inflow of inmates into correctional institutions. The National Criminal Code facilitates this by categorizing fines into proportional classes, thereby providing judges with broader discretion to avoid imprisonment for offenses that can be remedied financially.

To fully understand the depth of the reform offered, it is necessary to comprehensively examine Articles 78 through 84 of Law Number 1 of 2023. These provisions establish a highly structured framework intended to prevent fines from ultimately leading to imprisonment. Several revolutionary aspects of this framework include:

1. Proportional Categorization (Article 79): Fines are grouped into eight categories, ensuring that the amount imposed is rational and proportional to the seriousness of the offense.
2. Payment Flexibility: The law allows flexible payment periods and installment systems for offenders experiencing financial hardship.
3. Asset Execution Mechanism: The state is granted coercive authority to seize and auction the offender’s assets or income to satisfy unpaid fines.
4. Non-Custodial Substitute Penalties: If fines remain unpaid and assets are insufficient, sanctions are not automatically converted into imprisonment but may instead be directed toward supervisory penalties or community service.

This study concludes that the criminal law policy concerning fines under Law Number 1 of 2023 represents a manifestation of a broader transformation in legal mindset. The implementation of fines is no longer merely an administrative matter but a juridical instrument strategically designed to break the cycle of dependence on imprisonment, which has historically failed to address criminality holistically. Its objective is to ensure that Indonesia’s criminal justice system genuinely prioritizes substantive justice and victim protection rather than procedural formalities.

A. Implementation of Fines as an Alternative to Imprisonment

A critical analysis of Indonesia’s judicial system reveals a significant gap between statutory provisions and practical implementation. Although national criminal law reform has introduced stronger alternative sanctions, law enforcement mechanisms often remain trapped within institutional inertia that is difficult to overcome. Legal reform discourse should not remain solely at the normative level, as the effectiveness of any legal rule depends greatly on the

readiness of institutional infrastructure and the legal culture of its implementers. Therefore, this section examines why the paradigm transformation embedded in the new Criminal Code has not yet been fully actualized in resolving the crisis within correctional institutions.

This reality demonstrates a sharp imbalance despite the strong normative foundation supporting fines. Although Law Number 1 of 2023 provides a progressive legal framework, major structural barriers continue to hinder the effectiveness of fines in Indonesia. Law enforcement remains constrained by multidimensional challenges that frequently cause alternative sanctions to lose their intended purpose during implementation.

One major issue lies in the absence of a strong and comprehensive legal framework regulating the technical execution of fines. Normatively, existing mechanisms still stipulate that failure to pay fines results in subsidiary imprisonment. This creates a significant paradox: attempts to reduce prison overcrowding ultimately lead offenders into prison due to financial incapacity, effectively returning the policy to its original problem.

Indonesia's law enforcement system remains trapped in a formalistic and procedural orientation. Judges often seek legally "safe" positions by imposing imprisonment strictly according to statutory wording, without adequately considering substantive justice or the fiscal burden generated by incarceration. This tendency frequently marginalizes restorative justice objectives in favor of administrative compliance.

Economic barriers further widen the justice gap, particularly for individuals from lower-income backgrounds. Evidence suggests that many offenders are unable to pay compensation or fines, reinforcing public perceptions that the law is harsh toward the poor yet lenient toward the wealthy. On one hand, the state promotes restorative justice; on the other hand, fines become irrelevant and discriminatory for economically disadvantaged individuals who lack financial capacity.

These structural shortcomings often compel judges to revert to imprisonment as a traditional sanction. Indonesia's legal system has not yet fully adapted to sociological realities, particularly due to the absence of a well-established community service mechanism as a substitute for unpaid fines. Without effective implementation of substitute mechanisms introduced by the new Criminal Code, fines risk remaining merely normative concepts without transformative impact in practice.

A retributive legal culture continues to dominate the mindset of both society and law enforcement officials in Indonesia. Referring to the ideas of legal scholar Lawrence Friedman, the success of a legal system depends heavily on its legal culture. However, prevailing attitudes still associate justice primarily with imprisonment. This punishment-oriented mindset hinders the transition toward a more modern and humane sentencing system.

Law enforcement officials continue to face difficulties in shifting sentencing orientations. Although legislation provides the option of fines, judges often prefer imprisonment due to social pressure or fear of being perceived as colluding with offenders if only financial sanctions are imposed. Such concerns

frequently outweigh rational considerations regarding legal utility and prison reduction.

The inability to overcome these challenges sustains Indonesia's heavy reliance on imprisonment. Unless legal culture and fine execution systems are fundamentally reformed, fines will never become a genuine solution to prison overcrowding. Consequently, the state will continue allocating large fiscal resources to maintain a system that remains inhumane, conflict-prone, and ineffective in rehabilitating offenders.

B. Effectiveness of Fines within the Framework of Restorative Justice

This study emphasizes that the introduction of new norms in the National Criminal Code requires strict policy oversight to ensure implementation extends beyond textual regulation. Given the complexity of juridical, sociological, and cultural barriers previously identified, an applicative and solution-oriented policy blueprint is necessary. Legal reform must be understood not as a one-time event but as a continuous process requiring synergy between regulation and practical implementation. Therefore, strategic policy formulation is needed to fundamentally redirect criminal law enforcement in Indonesia.

The author proposes a prescriptive approach to ensure that fines do not become merely symbolic provisions within Law Number 1 of 2023. Criminal law reform demands comprehensive strategic measures encompassing structural reform and legal culture transformation. Without concrete implementation efforts, the aspiration to reduce prison overcrowding will remain an academic discourse detached from practical reality.

As a foundation for this prescriptive approach, Articles 78 through 84 of Law Number 1 of 2023 provide a comprehensive and structured framework to prevent fines from resulting in imprisonment. These provisions establish proportional categorization of fines into eight classes and offer payment flexibility through installment mechanisms for financially disadvantaged offenders.

At the core of ensuring effectiveness, Article 81 introduces a systematic sequence of enforcement measures, including:

1. Asset Seizure: The state possesses authority to confiscate offenders' property or income if fines remain unpaid.
2. Alternative Penalties: If fines cannot be paid and assets are insufficient, sanctions should not automatically convert into imprisonment but instead become community service or supervisory penalties.
3. Imprisonment as *Ultimum Remedium*: Imprisonment should only be used as a final measure after all economic and social enforcement mechanisms have failed.

Through the comprehensive framework established under Articles 78 to 84, many shortcomings of previous regulations are addressed. Fines now possess enforceable execution mechanisms, allowing judges to impose them confidently while contributing to non-tax state revenue and preventing further prison overcrowding.

To ensure effective implementation of this framework, the government must accelerate the issuance of implementing regulations detailing procedures for fine collection and transparent management of fine-generated funds.

Legal authorities must prioritize transforming the mindset of law enforcement officials through continuous education regarding restorative justice principles. Judges, prosecutors, and police officers must internalize the understanding that successful law enforcement is no longer measured by incarceration rates but by the effectiveness of conflict resolution and social restoration. Simultaneously, public legal awareness must be strengthened so that imprisonment is no longer perceived as the sole legitimate form of justice.

The government must also strengthen synchronization between fines and community service mechanisms as safeguards for financially incapable offenders. Judges should no longer automatically convert unpaid fines into imprisonment but instead direct offenders toward community service or supervision that benefits society. This approach ensures that prison overcrowding reduction targets are achieved without sacrificing justice for economically disadvantaged individuals.

The justice system should institutionalize the role of mediators in reconciliation processes, both during pre-adjudication and adjudication stages, to reinforce the spirit of *living law* and local wisdom. Direct dialogue between offenders and victims is essential for determining fair, realistic, and responsibility-oriented compensation or fines. Such mechanisms align with deliberative traditions within Indonesian society while enabling faster and more substantive dispute resolution.

Optimizing fines promises dual benefits for Indonesia's legal system: reducing the state's fiscal burden and strengthening the humanitarian dimension of justice. The success of this agenda depends upon synergy among comprehensive regulations, progressive legal culture, and judicial courage to adopt innovative legal approaches. Ultimately, justice in Indonesia should no longer be measured by the severity of imprisonment but by the realization of offender accountability and the restoration of social harmony within society.

CONCLUSION

Based on the findings and discussion presented in this study, several conclusions may be drawn as follows:

1. The criminal sentencing policy under Law Number 1 of 2023 (the National Criminal Code) has introduced a fundamental reorientation from a retributive paradigm toward restorative, corrective, and rehabilitative justice. The *ratio legis* behind strengthening fines represents the application of the principles of balance and *ultimum remedium*, whereby fines are positioned as a strategic instrument to reduce the inflow of inmates into correctional institutions. This policy aims to mitigate the prison overcrowding crisis, which has significantly weakened rehabilitative functions and imposed substantial financial burdens on the state.
2. The implementation of fines as an alternative to imprisonment continues to face multidimensional challenges. From a juridical perspective, there

remains a lack of comprehensive technical regulations governing the execution of fines. Sociologically, economic disparities often make it difficult for offenders to fulfill financial sanctions. However, the most critical obstacle is cultural in nature, namely the legal culture of law enforcement officials, which remains deeply rooted in prison-centered punishment. As a result, judicial discretion to impose non-custodial sanctions is often underutilized.

3. The effectiveness of fines in addressing prison overcrowding requires an integrated policy framework. This includes transforming the paradigm of law enforcement officials, strengthening regulations concerning the conversion of unpaid fines into community service rather than imprisonment, and optimizing the role of mediators in facilitating realistic compensation arrangements. Fines should be viewed not merely as financial penalties but as mechanisms to restore social balance and realize humane substantive justice.

RECOMMENDATIONS

Based on the conclusions above, the author proposes several strategic recommendations:

1. **To the Government and Legislators:** The government should promptly formulate and enact implementing regulations (*Government Regulations*) concerning the technical execution of fines and community service sanctions under the new Criminal Code. These regulations must ensure that an offender's inability to pay does not automatically result in imprisonment but instead leads to alternative sanctions that support the goal of reducing prison overcrowding.
2. **To the Supreme Court and Law Enforcement Authorities:** Continuous education and training should be conducted regarding restorative justice values and *living law* principles embodied in Law Number 1 of 2023. Judges are encouraged to adopt more progressive judicial approaches (*judicial activism*) by imposing fines or customary obligations in place of imprisonment, particularly for minor offenses. The Supreme Court of Indonesia should play a central role in promoting this transformation.
3. **To Academics and Future Researchers:** Further studies are needed to develop proportional fine standards based on offenders' economic capacity, such as a *day-fine system*, to ensure fairness across all socioeconomic groups. Such research would contribute to creating a sentencing model that is equitable, practical, and socially responsive.

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