

## MAXIMUM LIMITATION OF FINES FOR ECONOMIC CRIMES IN LAW NUMBER 1 OF 2023

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### Abstract

*Criminal law provisions in the colonial-era Criminal Code are no longer competent to uphold society's sense of justice due to the emergence of more sophisticated crimes with a variety of modus operandi. By approving Law Number 1 of 2023 on the Criminal Code, the first steps toward reforming the criminal code were taken. One of the recently established law reforms has to do with the criminal justice system. In this study, the punishment scheme in Law Number 1 of 2023 will be identified and analyzed, as well as the effects of the law's provision for maximum criminal sentences for economic offenses. This article's study was conducted using a normative legal research methodology that included statutory, conceptual, and case-based approaches. The study's findings demonstrate that Law Number 1 of 2023 offers minimal and maximum protections against criminal risks, among them economic crimes. If the loss resulting from the offense exceeds the maximum fine that may be imposed, this rule may result in unfairness, especially for the victim. Additionally, because judges are not allowed to impose sentences that exceed the predetermined guidelines, the maximum punishment cap may lessen the deterrent effect on criminals.*

**Keywords:** *Economic crime; Fines; Limitations.*

### 1. INTRODUCTION

The law that governs criminal matters is known as criminal law.<sup>1</sup> According to W.L.G. Lemaire, criminal law is a set of standards dictating what must be done and what is disallowed by the lawmakers together with a consequence in the form of punishment that has the purpose of deterring future behaviour or causing extreme pain. In this regard, legislation that supports the objectives of the nation as outlined in the Republic of Indonesia's 1945 Constitution is required (*hence referred to as the 1945 Constitution of the Republic of Indonesia*). To achieve a progressive national criminal law system, the legislation still has to be developed or updated, particularly in the criminal law area. As the common understanding, the criminal law cannot be divorced from general understanding correlations between law, state, society, and crimes. It also shifts necessitates a reimagining of criminal law reform that reflected living values and policy-oriented approach.<sup>2</sup>

<sup>1</sup> Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana Di Indonesia*, 4th ed. (Bandung: Eresco, 1986), 1.

<sup>2</sup> Gede Eka Rusdi Antara et.al, 'Formulation of Customary Criminal Law in Future Criminal Code and Legal Enforcement in Indonesia', *Substantive Justice International Journal of Law*, 4.2 (2021), 164-181.

The current criminal justice system is based on certain premises that are highly dependent on culture, society and tradition, and influence institutional structures and legal practices. These premises relate, for example, to the availability of economic resources, the existence of social problems such as poverty, and the understanding of social phenomena such as mental illness. The doctrine of criminal insanity raises particular questions about our legal culture's understanding of normality and deviance. Cultural anthropology holds that every society has certain cultural and social rules that define a person as normal or abnormal.<sup>3</sup> Since 1963, work has been done on the draft criminal law code, sometimes known as the Criminal Code. As a manifestation of the desire to fulfill the mission of decolonizing the colonial legacy of the Criminal Code, democratizing criminal law, consolidating criminal law, and adapting and harmonizing various legal developments that have occurred either as a result of developments in the field of science criminal justice, the establishment of the Indonesian National Criminal Code is intended to serve as the fundamental foundation of the Indonesian national criminal law system, in addition to being an illustration of responsible national sovereignty.<sup>4</sup> The House of Representatives (DPR) had just recently begun considering the RKUHP more in-depth in 2015.

Sikumbang (2013) said given each country has its own values. In addition, the Criminal Code that is now hundreds of years old. Law or rules of law which is hundreds of years old is no longer necessarily correspond with the development of the current era.<sup>5</sup> There are discrepancies between the previous Criminal Code (KUHP) and Law Number 1 of 2023 about the Criminal Code, particularly in the book's contents. The new Criminal Code (KUHP) has originally bundled 3 (three) volumes into 2 (two) books. General requirements controlling the extent of application of criminal laws and regulations, criminal responsibility, sentence, crimes and acts, the fall of prosecution and execution of crimes, as well as the definition of words and closings, are found in the first book of the new Criminal Code. All criminal activities are governed by the second book of the new Criminal Code, which is organized by category of crime. These offenses include offenses against state laws, offenses against the president and vice president's dignity, offenses against friendly nations, offenses against state obligations and rights, offenses against the law, offenses against public order, offenses against the judicial system, offenses against religion and religious life, and other offenses. In the meantime, the second book of the previous Criminal Code was combined with the third book.<sup>6</sup>

<sup>3</sup> Linda Groning and Slavka Dimitrova, 'Criminal Insanity in Bulgaria and Norway: Analysing the Prospect of a Common Approach', *International Journal of Law and Psychiatry*, 8.7 (2023), 1-10

<sup>4</sup> International Commission on Intervention and State Sovereignty, "The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty" (New York, 2001).

<sup>5</sup> Imam As Syafei, *The 5 The Proceeding " Legal Reconstruction in Indonesia*, Unissula Press, 2019 < <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/apic/article/view/10988/4229> > .

<sup>6</sup> Tim Penyusun Naskah Akademik Rancangan Undang-undang Tentang Kitab Undang-Undang Hukum Pidana, *Draft Naskah Akademik Rancangan Undang-Undang Tentang Kitab Undang-Undang Hukum Pidana* (Jakarta: Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2010), 81.

Economic crime is rife in social life in the modern technology era. An act that contravenes any right, obligation, or restriction outlined in the legislative guidelines including state policy in the economic sphere in terms of accomplishing national objectives is considered an economic crime.<sup>7</sup> So that the consequences of losses are not too great for a country's economic existence, the government must set forth clear regulations governing requirements or prohibitions in the economic sector. The government must also be resolute in dealing with state economic losses and preventing their recurrence. Economic criminals must be dealt with harshly and subjected to just punishments. To safeguard the public against arbitrary treatment outside the law or the abuse of punishments, law enforcement is conducted.

Several economic offenses that were formerly governed outside the old Criminal Code are now governed under Law Number 1 of 2023. Law Number 7 of 1955 Concerning Investigation, Prosecution, and Trial of Economic Crimes, for example, was one of the procedures for economic crimes in place before Law Number 1 of 2023 was established, Law Number 24 of 1999 concerning Foreign Exchange Flows and Exchange Rate Systems, Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes, Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, Law Number 7 of 2014 concerning Trade, and so forth. Law Number 1 of 2023 attempts to define the rules governing these economic crimes, although it does not offer in-depth guidelines. In general, numerous articles control economic crimes rather than a single chapter dedicated to them.

The punitive system put in place shows how the criminal code has been updated since Law Number 1 of 2023 was ratified. One of the things that might be looked at further is the possibility of a maximum penalty ceiling. In Law Number 1 of 2023, the maximum duration or number of criminal threats is established to adhere to an indeterminate sentence. As a result, there is not only a general minimum but also a unique maximum for each offense, in addition to the general minimum. The law's authors feel that guidelines about restrictions or objective criteria are necessary for assessing a crime's seriousness from both a formal and material standpoint, for instance, with relation to fines, one of the primary forms of punishment. Fines are divided into 8 (eight) categories under Law Number 1 of 2023. There is a maximum fine that can be assessed for each category. If the amount of the loss brought on by a crime exceeds the maximum fine that may be levied, this might be problematic. On the other hand, courts are not permitted to impose fines that exceed the maximum nominal amount that has been set, which may cause certain parties, particularly victims, to feel unjustly treated.

This essay employs the kind of normative legal study that is concerned with analyzing how rules or norms are used in relevant positive legislation. Statutory approaches, conceptual approaches, and case approaches are the methods employed. To address

<sup>7</sup> H.A.K. Mokh Anwar, *Hukum Pidana Di Bidang Ekonomi* (Bandung: Citra Aditya Bakti, 1990), 17-18.

the suggested legal difficulties, the statutory method is used, which entails reviewing all statutory rules. The conceptual approach is a method for obtaining answers and developing strong arguments in response to certain legal challenges through established beliefs and doctrines. The topic at hand, which has given rise to court rulings with conclusive legal effect, is examined using the case technique.

## 2. ANALYSIS AND DISCUSSION

### 2.1. Application of the Concept of Limitation of Punishment in Law Number 1 of 2023 concerning the Criminal Code

#### 1. Sentencing system

Three (three) primary topics in criminal law—criminal acts, criminal culpability, and criminal and sentencing are the subject of the study. These three elements serve as both the foundation and subsystems of the criminal justice system. The criminal law enforcement process includes the sentencing system, which controls how criminal offenders are punished. The process of punishing offenders is carried out in steps that are organized, notably:<sup>8</sup>

1. Determination of punishment by legislators;
2. Punishment by the competent authority; And
3. Implementation of punishment by the competent authority

Both a functional and normative perspective may be used to understand the definition of the sentencing system. The sentencing system can be understood as:<sup>9</sup>

1. The complete framework of criminal functionalization, operationalization, and concretization (laws and regulations).
2. The complete framework for criminal law enforcement that makes specific preparations so that someone can face punishment.

Meanwhile, based on the normative-substantive point of view, the penal system is defined as:<sup>10</sup>

1. The entire system of material legal norms for sentencing.
2. The whole system of material criminal law norms for the imposition and implementation of criminal law.

In the Academic Text of the Criminal Code Bill it is stated that the underlying principle of the penal system in the Criminal Code is the idea of a monodualistic balance between public and individual interests, between social welfare and social defence, between offender and victim-oriented crime, the idea of using a double track system with action, the idea of making non-custodial measures effective, the idea of elasticity of punishment,

<sup>8</sup> Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana: Masalah Pemidanaan Sehubungan Dengan Perkembangan Delik-Delik Khusus Dalam Masyarakat Modern* (Bandung: Alumni, 1992), 91.

<sup>9</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Bandung: Citra Aditya Bakti, 2005), 262

<sup>10</sup> Barda Nawawi Arief.

the idea of modifying criminal adjustments, the idea of subsidiarity in choosing the type of crime, the idea of forgiveness from judges and the idea of prioritizing justice over legal certainty. This principle is a differentiator from the provisions in the previous Criminal Code.

It should be noted that the goal of sentencing is to deter criminal activity by upholding legal standards, socialize criminals by offering guidance, resolve conflicts brought on by criminal activity, restore balance, and foster a sense of peace in society, as well as absolve criminal activity's perpetrators of guilt. Making plans for a new punishment system is important to gauge the harshness of the penalty. A new punitive system was established based on several factors, including:

1. Prevent the existence of a very striking disparity in crimes for crimes of the same or more-or-less-equal quality.
2. Increase the effectiveness of general prevention, especially for criminal acts that are considered dangerous and disturbing to the community.
3. If the maximum penalty can be aggravated in some cases, the analogy is also considered that even the minimum sentence can be aggravated in some cases.

The criminal justice system follows a two-line structure, or "*maatregelen*," which stands for "*type of crime and type of action*." Judges can impose punishments for crimes they have committed, but they cannot be held accountable for their acts because of conditions that might result in a sentence being vacated, such as having a mental disease, a disorder of the mind, or being mentally retarded.

It is essential to create employing a category system when threatening fines. It is envisaged that in the formulation of criminal crimes, it suffices to specify a certain type of penalties as described in the First Book rather than mentioning a specific amount of fines. The use of the category system is justified by the fact that penalties are a category of crime whose value fluctuates significantly more frequently as a result of fluctuations in currency values brought on by the state of the economy. Because just the articles defining the categories of penalties in the First Book are updated, rather than all the fines included in the formulation of criminal offenses, the category system will make it simpler to adapt for currency value fluctuations.

## 2. Type of crime

### 1. Primary Penalty

The following are the fundamental sorts of punishment that must be included in the most recent Criminal Code arrangements:

#### a. Imprisonment

When a criminal is placed in a correctional facility, his independence or freedom of movement is taken away, which is known as imprisonment.<sup>11</sup> Prison

<sup>11</sup> Dwidja Priyatno, *Sistem Pelaksanaan Pidana Penjara Di Indonesia* (Bandung: Refika Aditama, 2009), 71-72.

or the denial of independence stems from an individualistic perspective on life, and thanks to Wethoek van Stafrecht, Indonesia has had this offense as a criminal from January 1, 1918. In Book II of the Criminal Code, imprisonment is the form of punishment that is most frequently meted out to criminals. Criminal offenses that are covered by laws other than the Criminal Code, whether they are written separately or cumulatively, carry the prospect of imprisonment as well as other possible criminal penalties.<sup>12</sup> Certain things are contradictory when seen from a philosophical perspective, as follows:<sup>13</sup>

- 1) The purpose of prison is as a means to guarantee the protection of convicts;
- 2) Provide opportunities for convicts to be rehabilitated.

This leads to the dehumanization of those who commit crimes and will ultimately hurt those who have been incarcerated for a long period, such as a decline in productivity in terms of maintaining their social lives.

The use of fines and conditional sentences (*supervision sentences*) as alternatives to crimes of deprivation of liberty, the avoidance of short-term deprivation of liberty, and the application of the Standard Minimum Rules for the Treatment of Prisoners (SMR), which were adopted by the First UN Congress in 1955 on Crime Prevention and Development of Offenses, are among the principles that must be upheld in the regulation or implementation of prison sentences.

#### b. Suspended sentence

In the WVS of 1915, there is no provision for a suspended sentence. On November 1 and 15, 1946, the Republic of Indonesia Law 1946 Number 20 RI News Year II Number 24 included Article 10 of the 1946 Criminal Code, which is the offense of closure. According to Article 2 Paragraph 1 of the Law, the court may impose a suspended sentence when prosecuting individuals who commit offenses that are punishable by imprisonment because they are motivated by intents that threaten them with imprisonment or because they are motivated by intentions that merit respect. According to the article, if the judge determines that the act that constitutes a crime, the way it was committed, or the result of the said act is such that the act is more appropriate if sentenced to imprisonment, The Government Regulation Number 8 of 1948 about Houses of suspended sentence governs the methods for committing the crime of confinement. These rules demonstrate that the reason suspended sentences are superior to imprisonment is that the suspended sentence population differs from imprisonment populations in that their behaviours are motivated by deserving goals.

#### c. Supervision sentence

<sup>12</sup> Priyatno. 72-77.

<sup>13</sup> Muladi, *Lembaga Pidana Bersyarat* (Bandung: Alumni, 1985), 8.

Criminals who meet specified requirements (*actions and circumstances*) are subject to the supervision penalty, which entails their return to society under the supervision of supervisory authorities with their aid in becoming decent people and contributing members of society. The reason criminals are not put behind bars is to shield them from any potential negative effects that would arise if they were housed in the jail. The option to live a normal life as a person, a family member, a community member, and a citizen is also provided to those who commit crimes that are subject to supervised punishment, as long as they follow the court's orders consistently. Barda Nawawi Arief claims that the imposition of a criminal sentence is delayed to apply the Supervision penalty. Therefore, there isn't a *final sentence* in this instance.<sup>14</sup> The subtext of this line is that those who commit crimes might avoid being labeled as evil people, which will, in some way, affect how they spend their lives in society.

#### d. Criminal Fines

The most significant penalty is a fine. When viewed from the perspective of correctional institutions that serve as coaching and improvement institutions, imprisonment is deemed ineffective due to a lack of facilities and infrastructure, especially for convicts who commit minor crimes and with sentences of less than six months. As time passes, fines become more important in terms of both the minimum and maximum fines as well as the use of punishment in sentencing. The categories are used based on the Criminal Code used to establish fines. In line with various alternative uses of sanctions, which no longer rely on sanctions for losing independence. Criminal fines have also fulfilled the basic of criminal philosophy, which meet an aspect of retaliation, fostering and social control in society, so this criminal, highly considers humanitarian aspects and meets the requirements of criminal modernization. Because basically, a fine is one type of criminal contained in the Criminal Code (KUHP) which aims to burden someone who violates the provisions of the Criminal Code by paying a certain amount of money or assets to be felt as a loss by the makers themselves so that order in the community recovered.<sup>15</sup> The categorical formulation of fines is intended to obtain a clear pattern regarding the maximum fines specified for various criminal acts in their adjustments, in the event of economic and monetary changes.

#### e. Community service order

The revised Criminal Code of Indonesia will include a new kind of penalty known as the Community Service Order. Short-term deprivation of liberty, which includes jail and detention, as well as penalties imposed by judges on defendants,

<sup>14</sup> Barda Nawawi Arif, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara* (Yogyakarta: Ananta, 1993), 69.

<sup>15</sup> Putri Ayu Wulandari and Mochammad Zaidun, 'The Replacement of Criminal Fine in Criminal Taxation', *Yuridika*, 35.1 (2019), 113–128 < <https://doi.org/10.20473/ydk.v35i1.15749> > .

are alternatives to social work punishment. Community service orders (CSOs), often known as social work punishment in other languages, are a type of crime in which the convict serves the offender by performing predetermined social work. The most recent Criminal Code's Article 85 governs how social work punishments are administered, which essentially says:

- 1) If the defendant commits a crime that carries a sentence of less than 5 (five) years in prison and the judge imposes a maximum sentence of 6 (six) months in jail or a maximum fine of category II, a Community Service Order may be imposed.
- 2) In imposing social work punishment as referred to in paragraph (1), the judge must consider:
  - a) The defendant's confession of the crime committed;
  - b) The workability of the accused;
  - c) The consent of the accused after being explained regarding the purpose and all matters related to social work punishment;
  - d) Social history of the accused;
  - e) Protection of the work safety of the accused;
  - f) Religion, belief, and political beliefs of the accused; and
  - g) The defendant's ability to pay a fine.
- 3) Implementation of social work punishment may not be commercialized.
- 4) Social work punishment is imposed for a minimum of 8 (eight) hours and a maximum of 240 (two hundred and forty) hours.
- 5) Social work punishment is carried out for a maximum of 8 (eight) hours in 1 (one) day and can be paid in installments for a maximum of 6 (six) months by taking into account the convict's activities in carrying out his livelihood and/or other useful activities.
- 6) The implementation of social work punishment as referred to in paragraph (5) is contained in a court verdict.
- 7) The court verdict as referred to in paragraph (6) also contains an order if the convict without a valid reason does not carry out all or part of the social work sentence, the convict must:
  - a) Repeat all or part of the social work punishment;
  - b) Serve all or part of the prison term switched out for the stated social work punishment; or
  - c) Pay all or part of the fine that is switched out for community service or serve a jail sentence in place of an unpaid fine.
- 8) Prosecutors oversee the administration of social work penalties, while social counselors provide counseling.
- 9) The following information must be included in court decisions regarding social work punishment:



- a) The length of the jail or prison term or the amount of the fine imposed by the judge;
- b) The length of time the social work sentence must be served, including the number of hours per day and the period for completion of the social work sentence; and
- c) Sanctions if the convict does not serve the social work sentence imposed.

## 2. Supplementary Punishment

The application of supplementary punishment, which is a sentence that may be imposed in addition to the primary penalty, is optional, but it cannot be done apart from the primary sentence, thus both must be carried out. Additional sentences may be imposed in addition to the primary sentence or as a separate penalty, as well as in conjunction with other additional sentences. Additional penalties include the loss of certain privileges, the seizure of property or money, the publication of the judge's ruling, restitution, and the performance of communal responsibilities such as those imposed by local customs or legal requirements. Except for the termination of corporate rights and the performance of customary responsibilities, additional punishment must be expressly indicated in the formulation of the relevant criminal offense before the judge can consider it to have been imposed on the guilty.

Revocation of the convict's rights is a sort of additional punishment that can be applied to:

- a. The right to hold a position in general or a certain position;
- b. The right to become a member of the Indonesian National Armed Forces and the Indonesian National Police;
- c. The right to vote and be elected in elections held based on the prevailing laws and regulations;
- d. The right to become a legal adviser or administrator upon a court order;
- e. The right to be guardian, supervisory guardian, for a person who is not his/her child;
- f. The right to exercise the power of the father, exercise guardianship or guardian over his child; and/or
- g. The right to practice certain professions.

Regarding the subject of corporate law, the rights revoked are all rights obtained by the corporation

## 3. Special Crimes For Certain Criminal Acts Specified In The Law

People who support and disagree with the purpose and nature of the death penalty have engaged in heated disputes. The death penalty is opposed by individuals who believe it breaches human rights and is sadistic behavior (*abolitionists*). The convict's and family's psychological and social misery persisted despite being thought to be irreparable. Furthermore, if the decision to execute someone contains an error, it

cannot be changed. As a result, the death penalty frequently fails to deter criminal behavior or stop similar crimes. On the other hand, those who support (*retentionist*) contend that those who commit extreme crimes in order to uphold justice, which seeks to atone for wrongdoing, should be held accountable for their actions.<sup>16</sup> The death penalty is classified as a unique and alternative punishment rather than being specified as one of the penalties in the main criminal category. The judge must give great thought and deliberation before ordering the death penalty since it is an exceptional sentencing. To deter crime and safeguard society, Article 98 of Law Number 1 of 2023 threatens the use of the death penalty as a last resort. Article 99 of the Constitution further regulates the execution of the death penalty as follows:

- a. After the president's appeal for the convict's mercy is denied, the death sentence may be executed.
- b. The application of the death sentence, as described in paragraph (1), does not occur in public.
- c. The execution of the death penalty involves the offender being shot to death by a firing squad or in another manner specified by law.
- d. Until the offender gives birth, stops nursing her children, or recovers from a mental illness, the execution of capital sentence against pregnant women, nursing mothers, or mentally sick individuals is postponed.

## **2.2. Limitations of Criminal Sanctions for Economic Crimes According to the Criminal Code in Review Based on the Theory of Criminalization or Interests of Victims**

### **2.2.1. Economic Crimes in Law Number 1 of 2023 concerning the Criminal Code**

Law Number 1 of 2023 concerning the Criminal Code provides a clear understanding relating to criminal acts, as accommodated in the provisions of Article 12 of Law Number 1 of 2023. An act is classified as a criminal offense if laws and regulations threaten the act with sanctions or punishment. Actions that are threatened with sanctions must be unlawful or contrary to the laws that live in society. Law Number 1 of 2023 regulates various types of criminal acts that have not previously been regulated in the colonial heritage Criminal Code. One type of crime is a crime that is included in the category of economic crime. The pertinence of corporate compliance in the modern age is undeniable. Corporations must recognize their potential role in their abuse for nefarious purposes. As most economic activities occur in or through corporations, "*so does economic criminality*".<sup>17</sup> A type of crime known as "economic crime" is one that is motivated by money and is committed by businesses, organizations, or individuals. It typically involves deception against

<sup>16</sup> Abdul Jalil Salam and Zahlul Pasha Karim, "Death Penalty in Indonesia: Revisiting the Debate Between the Retentionist and the Abolitionist," *Lentera Hukum* 8, no. 1 (2021): 115–50, <https://doi.org/10.19184/ejrh.v8i1.20138>.

<sup>17</sup> Fabian Teichmann, et. al., 'Compliance as a Form of Defense against Corporate Criminal Liability', *Journal of Economic Criminology*, 1.100004 (2023), 1–4 < <https://doi.org/10.1016/j.jeconc.2023.100004> > .

a person or organization without the use of physical force as a threat or deterrent, with the intent to gain something or cause harm and where there is a strong case for criminal, administrative, or civil justice. Common examples of such crimes include fraud, bribery, money laundering, terrorist financing, intellectual property crimes, industrial (and economic) espionage, market manipulation, tax evasion, and cybercrime with a financial motive.<sup>18</sup>

Edmund W. Kitch asserts that there is no widely acknowledged concept of economic crimes.<sup>19</sup> Edmund W. Kitch defines economic crime as “*activity with significant similarities to the economic activity of normal, noncriminal business*” to give a general overview of the term.<sup>20</sup> According to Edmund W. Kitch’s definition, economic crimes are generally committed by offenders in an organized and structured way, making it difficult to determine if the economic activity is illegal or just a regular business without any criminal element. Economic crimes are typically referred to as crimes due to their financial motivations.<sup>21</sup> Economic crime, which includes aspects of fraud, embezzlement, providing a false impression, breach of trust, manipulation, and circumvention of laws, is an illegal act performed by an individual or a legal body without the use of force.<sup>22</sup> Economic crimes frequently include manipulating economic activity to make it seem acceptable and natural. Since they need coordination in the economic sector, which is illegal, all of these economic operations fall under the purview of criminal actions, which are sometimes referred to as organized criminal crimes.<sup>23</sup> Additionally, Edmund W. Kitch claimed that economic crimes have three characteristics: first, the criminal employs a *modus operandi* that is challenging to discern from the *modus operandi* of economic activity in general, Second successful businesspeople frequently become victims of these crimes, and third, offenses generally call for specialized management or control from law enforcement officers.

When examining the former Criminal Code’s provisions, it is clear that some of the articles cover the economic crime. These laws do not, however, completely prohibit economic crimes. Emergency Law Number 7 of 1955 concerning the Investigation, Prosecution, and Trial of Economic Crimes is one example of a law relating to economic crimes that is not listed in the Criminal Code. Fundamentally, by passing Law Number 1 of 2023 About the Criminal Code, reforms to criminal law rules have been established, namely with more intricate arrangements relating

<sup>18</sup> Clarissa A Meerts, “The Private Policing of Economic Crime – Corporate Investigations and Settlements,” *Journal of Economic Criminology* 1, no. 100016 (2023): 1–7, <https://doi.org/10.1016/j.jeconc.2023.100016>.

<sup>19</sup> Edmund W. Kitch, *Encyclopedia of Crime and Justice* (Cambridge: The Free Press, 1983), 671.

<sup>20</sup> Kitch.

<sup>21</sup> Yanel Garsione Damanik, “Problematika Pencegahan Dan Kejahatan Di Bidang Ekonomi,” *Jurnal Hukum Lex Generalis* 1, no. 4 (2020): 59–71.

<sup>22</sup> Muhammad Arief Amrullah, “Pencucian Uang Dan Kejahatan Terorganisir,” *Jurnal Hukum IUS QUIA IUS-TUM* 10, no. 22 (2003): 130–46.

<sup>23</sup> Amrullah.

to economic offenses that were previously governed by legislation outside of the Criminal Code. Law Number 1 of 2023 also allows for the expansion of the law's application to include companies in addition to people. The stipulations of Law Number 1 of 2023's Article 45, Paragraph 1, underline this. The fact that Law Number 1 of 2023 does not discriminate between a criminal and a violation is more indication. As required by Article 614's requirements, Law Number 1 of 2023 and other legislation must update the definitions of criminal crimes and violations of criminal acts.

The fact that parties other than the criminal justice system are involved in the investigation and response to these crimes is one factor that adds to the mystery surrounding economic crime in general and internal economic crime in particular. Organizations have a crucial part in the discovery and investigation of economic crime, as well as any potential responses that may follow, in addition to their roles as perpetrators, facilitators, or victims of economic crime. Economic crime, usually referred to as financial crime, is the criminal behavior that one person or a group of people engages in in order to gain a competitive financial or professional edge. The primary driving force behind these acts is financial gain.<sup>24</sup> There are three different categories of economic crimes, according to the *Encyclopedia of Crime and Justice*: property crime, regulatory crime, and tax crime. Property Crimes are acts that endanger a person's or a nation's property including forging money, fraud, and damage, as well as moving or concealing records, issuing blank checks, using credit cards that have been stolen or suspended, engaging in dishonest business practices, bribery in the workplace, obtaining or possessing items through deception, defrauding creditors who have faith in you, making false bankrupt statements with ulterior motives, and obtaining deposits.<sup>25</sup> A *regulatory crime* is an act that contravenes rules governing commerce or standards in the business environment, such as trafficking in illegal drugs, prostitution, falsifying company activity reports, and monopoly.<sup>26</sup> Smuggling and business tax evasions<sup>26</sup> are examples of *tax crimes*, which are violations of responsibility connected to reporting in accordance with tax regulations.<sup>27</sup>

The following behaviors were listed by Ahmad Sudiro as examples of those that fall under the category of economic crimes: (1) tax evasion; (2) credit fraud or other types of fraud; (3) embezzlement of public funds and other forms of misappropriation of public funds; (4) financial rule violations; (5) fraud in land transactions; (6) smuggling; (7) environmental delict; (8) price gouging; (9) exporting and importing

<sup>24</sup> Branislav Hock and David Shepherd Mark Button, *Economic Crime. From Conception to Response* (London: Routledge, 2022), 12.

<sup>25</sup> Musa Darwin Pane, *Bahan Ajar Tindak Pidana Ekonomi* (Bandung: Fakultas Hukum Universitas Komputer Indonesia, 2017), 7.

<sup>26</sup> Pane., 8

<sup>27</sup> Pane.

dangerous goods; (10) labor exploitation and consumer fraud.<sup>28</sup> Along with these deeds, economic crimes have also emerged in the fields of banking, customs, fraud in the customs industry, marine crimes, fisheries crimes, and so on.<sup>29</sup> It defines what behaviors are categorized as economic crimes based on the categories and manifestations of economic crimes. The implementation of penalties for activities that involve economic crimes with both criminal and administrative consequences has been controlled by Law Number 1 of 2023. Economic offenses are covered by some distinct articles in Law Number 1 of 2023 rather than a single chapter. Articles related to corporate responsibility (Articles 45–50), crimes involving stamp duty, state stamps, and state signs (Articles 382–388), crimes involving operating a business (Articles 511–Article 515), crimes involving fraud (Articles 492–Article 510), and other provisions relating to the regulation of economic crimes are just a few examples, illegal actions of money laundering (Article 607) and illegal acts of accessing a computer or electronic system at a bank (Article 334).

#### 2.2.2. Maximum Criminal Limitations in Law Number 1 of 2023 Reviewed Based on the Perspective of Victims' Interests

The word “criminal” is derived from the Dutch word “straf,” which means to purposefully cause suffering to someone who has been found guilty of a crime.<sup>30</sup> The distinction between punishment and crime is made by Andi Hamzah. While the term criminal is specifically associated with criminal law, the term punishment is used to apply to all forms of punishments in the administrative, civil, disciplinary, and criminal realms.<sup>31</sup> According to the criminal code *nullum delictum nulla poena sine praevia lege poenali*, which is specified in the terms of Article 1 point 1 of code Number 1 of 2023 respecting the Criminal Code, punishment must be based on statutory provisions.

Law Number 1 of 2023's legal reform can also be seen in terms of punishment. Law No. 1 of 2023's list of offenses generally includes main, supplemental, and action offenses. When enforcing it, judges have a variety of options at their disposal, such as imposing just principle sentences, only extra penalties, only actions, principal and action penalties, or principal, additional, and action penalties. Although the primary sentence specified in the offense's formulation is the only sentence that may be imposed by a court in practice, the judge may also impose other punishments that are not included in the tort formulation. Even if the penalty is just one term, judges have the option of selecting additional alternative sentences. Judges may also

<sup>28</sup> Ahmad Sudiro, “Ruang Lingkup Tindak Pidana Ekonomi Di Bidang Perbankan,” *Era Hukum* 3, no. 3 (1996): 55–71.

<sup>29</sup> Hartiwingsih and Lushiana Primasari, *Hukum Pidana Ekonomi* (Tangerang Selatan: Universitas Terbuka, 2017), 76.

<sup>30</sup> Mohammad Eka Putra and Abul Khair, *Sistem Pidana Di Dalam KUHP Dan Pengaturannya Menurut Konsep KUHP Baru* (Medan: Usu Press, 2010), 1.

<sup>31</sup> Andi Hamzah and Siti Rahayu, *Suatu Tinjauan Ringkas Sistem Pemidanaan Di Indonesia* (Jakarta: Akademika Pressindo, 1983), 20.

impose cumulative penalties for criminal threats made in the form of alternatives. Because of the losses they have endured, criminals' actions have essentially upset the balance of values in society. Additional forms of criminal punishment, including the payment of compensation, are used to restore and reclaim the balance of these values.

In essence, the judge sentences the offender as punishment for doing something that harms the legal rights of others. The human soul, human body, honor, decency, personal autonomy, and property are among the legal interests that criminal law protects. As a result, a life under the relevant laws can be formed. In the event of a crime, the state will take action against the criminals through law enforcement officials. In essence, punishment serves as a tool to accomplish an objective. The goal of punishment strays from striking a balance between the protection of the general public, including victims of crimes, and the protection and direction of criminals. As a result, it breaks from the principles of legality and guilt, which are two essential concepts in criminal law, when it comes to sentencing guidelines.

Reviewing the terms of Law Number 1 of 2023 reveals that the punishment that is threatened has a cap placed on it. The maximum amount of fines that a court may impose is one aspect that might be challenged. According to Law No. 1 of 2023's rules in Article 79, paragraph 1, the amount of fines is divided into 8 (eight) categories, including:

1. Category I, IDR 1,000,000.00 (one million rupiah);
2. Category II, IDR 10,000,000.00 (ten million rupiah);
3. Category III, IDR 50,000,000.00 (fifty million rupiah);
4. Category IV, IDR 200,000,000.00 (two hundred million rupiahs);
5. Category V, IDR 500,000,000.00 (five hundred million rupiahs);
6. Category VI, IDR 2,000,000,000.00 (two billion rupiahs);
7. Category VII, IDR 5,000,000,000.00 (five billion rupiahs); And
8. Category VIII, IDR 50,000,000,000.00 (fifty billion rupiahs).

Law Number 1 of 2023 also establishes a special minimum fine that may be imposed, which, if not specified, must be at least Rp. 100,000,000 (one hundred million rupiahs). The law requires that, when imposing criminal fines, judges must consider the convict's ability. Fines are carried out with the following provisions:

1. The offender pays the fine within the time frame specified in the judge's ruling.
2. If the offender does not pay the fine in full, the property may be sold to recoup the outstanding balance.

The issue at hand was whether the nominal threat of the fee was still appropriate given the potential for future changes in the value of the rupiah. However, by further controlling through governmental rules, the Law's provisions have prepared for the possibility of rupiah volatility.

The limitation of fines to amounts that have been set by the law causes issues with victim justice. This is due to the courts' restricted ability to impose sanctions above what has been decided. As in unlawful conduct by businesses that may result in huge losses. As a firm that is constantly focused on making profits and maintaining financial stability, As a result of recognizing this, illegal actions may probably be taken. Law No. 1 of 2023's criminal fine requirements is only applicable to the biggest category VIII, which has a value of Rp. 50,000,000,000 (fifty billion). If the legal subject commits a crime that results in more losses than the legal maximum fines, the category of maximum fines is deemed insufficient for delivering justice.

As the previous Director of PT. Jiwasraya insurance corruption case, this might cost the state up to Rp 16.8 trillion. Examining further incidents, such as the theft of money from the Indosurya Savings and Loans Cooperative, they stole up to Rp 106 trillion. 23,000 persons were victims of the corruption case. The victim expects a fair return for the offender who committed the crime by benefiting himself while considering the value of justice from their perspective, in addition to seeking to get recompense. Likely, the implementation of such fines won't be able to provide the victim a sense of justice if those responsible for economic crimes that result in significant losses are penalized following Law Number 1 of 2023. This is a result of Law Number 1 of 2023's Article 79, Paragraph 1, which establishes a maximum limit for the imposition of fines.

Retributive and utilitarian theories of punishment, each of which has distinct features, were put out by Herbert L. Packer. According to the retributive approach, punishment should be used to reward or punish offenders for their immoral behavior.<sup>32</sup> In essence, this perspective views punishment exclusively as retribution based on the offender's acceptance of responsibility, emphasizing earlier events (the offender's faults). According to this idea, the crime is what causes the victim to grieve; therefore, it is believed that a suitable punishment would serve as a deterrent to the perpetrator's future criminal behavior.

This contrasts with the utilitarian viewpoint, which emphasizes crime prevention (preventive) more than anything else. Although the utilitarian view does not emphasize punishment for the offender, it is hoped that the implementation of a sentence would result in benefits rather than merely pain. If the theory of sentencing is compared to the sentencing system in Law Number 1 of 2023, particularly the regulation of the maximum penalty limit for perpetrators, it is clear that the goal of punishment in Law Number 1 of 2023 is more complicated and aimed at striking a balance between the perpetrators, victims, society, and the state rather than just rewarding the perpetrators.

<sup>32</sup> Noveria Devy Irmawanti and Barda Nawawi Arief, "Urgensi Tujuan Dan Pedoman Pemidanaan Dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidana," *Jurnal Pembangunan Hukum Indonesia* 3, no. 2 (2021): 217-27, <https://doi.org/10.14710/jphi.v3i2.217-227>.

Nevertheless, severe penalties compared to the damages caused by illegal activity run the risk of failing to discourage offenders.

### 3. CONCLUSION

The criminal law enforcement process includes the sentencing system, which controls how criminal offenders are punished. The criminal justice system follows a two-line structure, or “maatregelen,” which stands for “type of crime and type of action.” Principal crimes, supplementary punishments, and crimes that are unique to certain criminal actions stipulated in the legislation make up the three areas into which different types of punishment fall. In Law Number 1 of 2023, provisions of economic crimes are dispersed among several articles rather than being expressly controlled in a few chapters.

The presence of a maximum punishment limit that has been established in the legislation is one of legislation Number 1 of 2023’s legal innovations that might be questioned. If the cost of the loss brought on by the crime rises to a level that is significantly higher than the maximum fine that may be imposed, the classification of fines into different categories and the imposition of a maximum sum may undermine the value of justice, particularly for the victim. Additionally, it could make criminals less likely to refrain from committing crimes.

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