

Criminal Law Reform Through the Classification: Toward a Restorative Sanctions in Indonesian Immigration Law

Maidah Purwanti¹ , Sigid Suseno¹ , Idris¹ ,
Erika Magdalena Chandra¹ 

¹ Faculty of Law, Universitas Padjadjaran, Bandung, Indonesia

✉ Corresponding email: maidah21001@mail.unpad.ac.id

Abstract

The enactment of the National Criminal Code in 2023 marks a significant shift in Indonesia's sentencing policy by promoting the ultimum remedium principle and prioritizing fines as the main form of punishment. These reforms aim to address the long-standing problem of prison overcapacity caused by the overuse of prison sentences and to promote restorative justice. The National Penal Code introduces a structured classification of fines, providing clear categories to reduce sentencing disparities and anticipate economic fluctuations. This classification is intended to serve as a reference for specific legislation, including the Immigration Act, where the main criminal sanction consists of imprisonment with fines as an alternative or cumulative punishment. This normative juridical research examines the integration of the National Criminal Code fine classification into the immigration law enforcement framework in Indonesia. The findings of this study reveal that although administrative measures such as deportation are more often imposed in practice, the lack of

deterrent effect is still a concern. Integrating fine classification into immigration administrative measures offers a balanced solution by combining procedural efficiency with the deterrent effect. This research recommends harmonizing administrative fines with the classification system in the National Criminal Code to enhance fairness, legal certainty, and deterrence of violations in immigration law enforcement while ensuring the protection of individual rights.

KEYWORDS *Law Reform, Fines Classification, Immigration Law, Ultimum Remedium, Restorative Justice*

Introduction

Despite 78 years of independence, Indonesia still uses the Criminal Code as the basic regulation in the criminal law system. Originally named *Wetboek van Strafrecht voor Nederlandsch Indie* or *WvSNI*, it was enacted in the *Dutch East Indies through Koninklijk Besluit* (Decree of the King of the Netherlands - Invoerings-verordening) No. 33 of October 1915, effective from January 1, 1918, which was a derivative legal product of the Dutch *WvS* created in 1881 and promulgated in the Netherlands in 1886.¹

To prevent a vacuum in criminal law, in 1945 the *WvSNI* was adopted into national law through Law No. 1/1946 on Criminal Law Regulations (known as *KUHP*). Furthermore, since 1958, efforts to reform the *KUHP* have continued, beginning with the establishment of the National Law Development Institute (*LPHN*) which organized the First National Law Seminar in 1963 by sparking the urgency to formulate a new *KUHP*. In 1993, the formulation of the new *KUHP* was almost completed, but this effort was halted when there was a change of Minister of Justice under the leadership of Oetoyo Oesman (1993-1998).²

It was only later when Muladi served as Minister of Justice in 1998 that the *RKUHP* was re-submitted. This agenda was continued when Yusril Ihza

¹ "Sejarah KUHP: Dari Roma ke Prancis, Lalu ke Belanda hingga Tiba di Indonesia" in full <https://news.detik.com>, downloaded on August 23, 2024

² *Ibid*

Mahendra served as Minister of Law and Human Rights in 2001-2004. In 2004, the RKUHP was included in the priority national legislation program. At that time, the Ministry of Law and Human Rights was led by Hamid Awaluddin (2004-2007). The DPR for the 2014-2019 period then agreed to the draft RKUHP in the first-level decision-making. So, you can imagine that the RKUHP has gone through 7 presidential changes and 20 ministerial changes throughout the efforts to formulate the National Criminal Code.³ Until finally, Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code was passed on January 2, 2023.

One of the differences between the National Criminal Code and the old Criminal Code is the type of sanctions. Sanctions in the old Criminal Code consist of main punishment in the form of death penalty, imprisonment, confinement, fine, and closure, as well as additional punishment in the form of deprivation of rights, forfeiture of goods, and announcement of judge's decision.⁴ Meanwhile, in the National Criminal Code, the criminal sanctions consist of three forms, first, the main punishment in the form of imprisonment, fines, supervision punishment, exile, and social work punishment.⁵ Second, additional punishment which consists of revocation of rights, deprivation of goods and/or bills, announcement of judge's decision, payment of compensation, revocation of license, and fulfillment of local customary obligations,⁶ and third, special punishment, namely death penalty which is always threatened as an alternative.⁷

The paradigm shifts of fines which were previously more often chosen as alternative and additional sanctions, in the National Criminal Code, fines become the main and additional penalties, according to the formulator of the National Criminal Code, the formulation of fines in the new National Criminal Code aims to make national criminal law more *ultimum remedium* and prioritize the principle of restorative justice. In the development of the Indonesian Criminal Justice System and also as a form of response to the law

³ *Ibid*

⁴ Article 10, Law Number 1 of 1946 concerning *the Criminal Code* (Indonesia, 1946).

⁵ Article 65 paragraph (1) of the National Criminal Code, "Law Number 1 of 2023 concerning the Criminal Code," 1-345.

⁶ *Ibid*, Article 66

⁷ *Ibid*, Article 67

that lives in society, the concept of resolving cases through a restorative approach such as the concept of restorative justice, alternative dispute resolution, and *sentencing circles*, and *islah* has become an alternative for resolving criminal cases.⁸

Restorative justice approaches that focus on rehabilitation and social reintegration are expected to contribute significantly, to addressing the problem of overcapacity in prisons, by minimizing the number of prisoners entering the correctional system through reconciliation and social reconsolidation efforts, this system is expected to reduce the overall crime rate in society.⁹ The concept of restorative justice has existed since the existence of criminal law. According to Mark Levin, as quoted by Johlar Purba, restorative justice has been declared a progressive approach after previously being declared an obsolete, old-fashioned, and traditional approach. Even though this concept of restorative justice is outside the provisions of the Indonesian Criminal Justice System, it is considered capable of providing real benefits and justice for society.¹⁰

Although restorative justice has received attention in the resolution of criminal cases in Indonesia, the concept of case resolution in restorative justice was not previously regulated in the old Criminal Code. However, the concept of restorative justice has been regulated in several specific laws and regulations, for example in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law).¹¹

The principle of *ultimum remedium* prioritized in the National Criminal Code is implied in the objectives of punishment in the National Criminal Code, namely: a. preventing the commission of Criminal sanctions by enforcing legal norms for the protection and care of society; b. socializing convicts by providing guidance and mentoring to become good and useful people; c. resolving conflicts caused by Criminal sanctions, restoring balance, and bringing a sense

⁸ Asmadi Syam, "Measuring the Concept of Restoration in Criminal Justice System," *Jurnal Ilmiah Kebijakan Hukum*, Vol 16, no. 2 (2022): 363, <https://doi.org/10.30641/kebijakan.2022.v16.363-376>.

⁹ Diaz Ratna Iswara and Taufiq Nugroho, "The Effect of Restorative Justice for Drug Users on the Overcapacity of Correctional Facility in Solo City" *Ajudikasi: Jurnal Ilmu Hukum* Volume 8 Number 1 (2024): 13–26.

¹⁰ Syam. *Ibid*

¹¹ Maria Silvy E Wangga, "Implementation of Restorative Justice in Criminal Cases in Indonesia," *Law and Humanities Quarterly Reviews* 1, no. 3 (2022): 109–15, <https://doi.org/10.31014/aior.1996.01.03.25>.

of security and peace to society; and d. fostering a sense of regret and freeing the convict from guilt.¹²

Mainstreaming restorative justice, one of which is through the imposition of fines in criminal sanctions, can be used as the main option instead of the second choice, especially in administrative legislation such as the Immigration Law, considering that the imposition of Immigration Administrative Measures as one of the immigration law enforcement in addition to criminal sanctions, as stipulated in Article 75 of the Immigration Law, is mostly imposed because it is considered more efficient, compared to the imposition of criminal sanctions. Despite being the first choice in the imposition of sanctions against immigration violations, the imposition of Immigration Administrative Measures is feared to lack a deterrent effect because the type of sanction is only limited to deportation. So, it shows the need for alternative sanctions, the presence of fine formulation as one of the sanctions in the National Criminal Code may be one of the solutions to the effectiveness of sanctions for violations of legal provisions. Therefore, the classification of fines in the National Criminal Code is expected to be a bright spot in alternative sanctions that are restorative but more assertive and solute.

With the classification of criminal fines changing the color of the punishment system in Indonesia, this research is conducted to answer the first question, whether the classification of criminal fines can be the basis of punishment that can accommodate restorative justice. And secondly, how can the classification of criminal fines in the Criminal Code be applied to special laws such as immigration laws? The final objective of the research is to obtain certainty that the classification of criminal fines can be used as a basis for punishment that can accommodate restorative justice, and used as the basis for the classification of fines in the Immigration Law.

This research uses a normative juridical method which is doctrinal legal research commonly called library research, or document study, because written regulations and legal materials are the target of research.¹³ As primary legal

¹² *Op.cit.*, Article 51

¹³ Soerjono Soekanto, *Pengantar Penelitian Hukum (Introduction to Legal Research)*, 6th ed. (Jakarta: University of Indonesia Publisher, 1986).

materials in this research, legal materials related to legislation are used, such as the old Criminal Code and the National Criminal Code, the Immigration Law, and other special laws that contain provisions on punishment. The research is enriched with secondary legal materials in the form of textbooks containing legal principles and classical views of highly qualified scholars and legal materials from universities, namely materials that provide guidance and explanation of primary legal materials and secondary legal materials.¹⁴ The information collection technique used in this writing is a library research technique, namely research conducted based on reading sources such as laws and regulations, books, scientific research, scientific articles, mass media, and legal journals related to the subject matter. The research analysis is carried out qualitatively, namely juxtaposing the laws and regulations to answer actual phenomena as research problems, to produce descriptive information, by concluding inductively to deductively, namely what is stated by the research targets concerned in writing, orally, and real behavior.

The approach and analysis of legal science is used to find out the contents of laws and regulations and legal cases, with an interdisciplinary approach that combines and combines various legal phenomena that occur, through a socio-legal approach,¹⁵ a normative legal research method analysis knife is used, namely doctrinal legal research which is also called library research or document study because this research is conducted or aimed at written regulations or legal materials.¹⁶ This journal research conducts a textual study of the articles in the laws and regulations, namely Law Number 1 of 2023 concerning the Criminal Code and Law Number 63 of 2024 concerning the Third Amendment to Law Number 6 of 2011 concerning Immigration (hereinafter referred to as the Immigration Law), which are critically analyzed.

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum (Legal Research)*, (Jakarta: Kencana Prenada Media Group, 2015).

¹⁵ Sulistyowati Irianto et al., *Kajian Socio-Legal Studies (Seri Unsur-Unsur Penyusun Bangunan Negara Hukum (Series of Elements Composing the Structure of a Legal State, Socio-Legal Studies))*, (Bali: Pustaka Larasan, 2012), <http://ikuswahyono.lecture.ub.ac.id/files/2015/10/bbri-socio-legal-studies-final.pdf>.

¹⁶ Ishaq, *Metode Penelitian Hukum, Penulisan Skripsi, Tesis, Serta Disertasi (Legal Research Methods, Writing of Theses, Theses, and Dissertations)*, 2nd Edition (Bandung: Alfabeta, 2020).

Implementation and Effectiveness of Indonesian Criminal Sanctions

Criminalization in Indonesia, especially related to imprisonment,¹⁷ which used to be rigid and prioritized the principle of *primum remedium*, after the ratification of the National Criminal Code began to show a flexible face and have an *ultimum remedium* nature. This can be seen in the inclusion of clause Article 70 which states that by continuing to consider the provisions as referred to in Article 51 to Article 54 (purpose of punishment and guidelines for punishment), imprisonment should not be imposed if a condition as determined in this article is found in the defendant. Such provisions have not been previously regulated in the old Criminal Code so the nature of punishment in the old Criminal Code is more *rigid* and based on *primum remedium*, prioritizing imprisonment compared to other alternative punishments, this is due to the limited choices given to judges to impose alternative punishments because Indonesian law, especially criminal law, is bound by the principle of legality, as stated in Article 1 of the old Criminal Code which states that 'an act cannot be punished except by the force of criminal rules in legislation that existed before the act was committed'.¹⁸

This legality principle ultimately 'shackles' judges in Indonesia in imposing sentences limited to what is stated in the articles in the old Criminal Code, which although in its sentencing places fines as part of the main sentence,¹⁹ in the threat of sanctions in subsequent criminal articles, fines are placed as alternative or cumulative sentences, so that the sentence that has been most often imposed is imprisonment, as a sentence in the form of restricting the freedom of movement of a convict by placing the person in a Correctional

¹⁷ Although it is an important mechanism to punish offenders, imprisonment is not an ideal "medicine" to overcome the problem of crime, it has not proven effective in preventing offenders from reoffending. Comparative studies show that imprisonment makes it more difficult for convicts to adjust to society after they have served their sentences and are prone to reoffending, because it has a destructive impact on prisoners, including prisonization, stigmatization, and recidivism, Erasmus A.T Napitulu et al., "Hukuman Tanpa Penjara Pengaturan, Pelaksanaan, dan Proyeksi Hukuman Non Penjara Non Pemenjaraan di Indonesia," *Institute for Criminal Justice Reform (ICJR)*, 2019, 126.

¹⁸ Indonesia, Law Number 1 of 1946 concerning Criminal Code, Article 1.

¹⁹ *Ibid*, Article 10.

Institution (hereinafter LAPAS),²⁰ this has implications for the excess capacity of the LAPAS. According to the Correctional Database System of the Directorate General of Corrections, Ministry of Law and Human Rights, as of 10th May 2025, the number of occupants of LAPAS throughout Indonesia can be seen in the following table:

Table 1: The Number of Inmates versus the Capacity of Correctional Institutions in Indonesia

Occupant Capacity	LPKA	LPP	LAPAS	RUTAN
Total Occupants	2411	6335	192015	75802
Capacity	4098	4790	99940	36919

Source: <https://sdppublik.ditjenpas.go.id/analisa/jumlah-penghuni>

In the table, it can be seen that the occupancy at the Lembaga Pembinaan Khusus Anak/Special Child Development Institution (hereinafter LPKA) has an occupancy that is still very sufficient in terms of capacity, this is because the juvenile criminal justice system in Indonesia has prioritized the principle of *ultimum remedium* by requiring the Restorative Justice approach to be prioritized by seeking diversion as regulated in the SPPA Law.²¹

However, it can also be seen in the table, that the capacity of the Lembaga Pemasyarakatan Perempuan/Women's Correctional Institution (hereinafter abbreviated as LPP), LAPAS, and Rumah Tahanan/Detention Center (hereinafter abbreviated as Rutan), experienced overcapacity reaching more than 80 percent, this shows that the imposition of imprisonment is still the main choice for judges against criminal offenders. This is as stated by Soerjono Soekanto in the theory of legal effectiveness, one of the factors that cause the

²⁰ PAF Lamintang, in Fajar Ari Sudewo, *Penologi dan Teori Pemidanaan (Penology and Criminal Theory)*, PT Djawa Sinar Perkasa, (2022): 47.

²¹ Indonesia, “Law Number 11 of 2012 concerning the Sistem Peradilan Pidana Anak (Juvenile Criminal Justice System),” Article 5, emphasizes that The Juvenile Justice System shall prioritize the Restorative Justice approach, which Article 7 emphasizes that restorative justice must be pursued through diversion at the level of investigation, prosecution, and examination of juvenile cases in the district court.

law to be ineffective is legal factors (norms),²² in this case, it means that the existing laws and regulations have not accommodated ideal law enforcement, because the types of sanctions in the old Criminal Code placed imprisonment as the main punishment and fines as alternative or cumulative sanctions, thus making judges have no other options or choices other than imposing imprisonment on criminal offenders. This has implications for overcapacity in LAPAS which has the potential to cause new problems, namely:

1. internal impacts in LAPAS, such as poor physical and psychological health conditions, and prone to conflict between inmates.
2. social impact, due to inadequate and ineffective rehabilitation from correctional officers, because the number of officers is not balanced with the number of inmates, this has implications for the concept of corrections, this has the potential to cause recidivism, due to the failure of reintegration of inmates when returning to society, due to not maximizing rehabilitation and lack of deterrent effect.
3. The economic impact of the state arising from the surge in the use of water, electricity, and the fulfillment of food costs for inmates,²³ has implications for increasing the burden on the state budget.²⁴

Renewal of Sanction System in the Indonesian National Criminal Code

This phenomenon invites critical reflection on the prevailing penal practices in Indonesia, particularly concerning the persistent over-reliance on

²² Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum* (Factors Influencing Law Enforcement), 17th edition (Depok: PT RajaGrafindo Persada, 2021).

²³ The Minister of Law and Human Rights said, in order to meet the needs of eating prisoners throughout Indonesia at 20 thousand rupiah per day, a budget of 1.4 trillion rupiah per year is needed, but an additional budget is needed because this amount is still felt insufficient. <https://katadata.co.id/berita/nasional/66c844399bbad/menkumham-baru-minta-tambah-jatah-anggaran-makan-napi-di-lapas>, accessed 10 May 2025.

²⁴ Diaz Ratna Iswara and Taufiq Nugroho, "The Effect of Restorative Justice for Drug Users on the Overcapacity of Correctional Facility in Solo City", *Ajudikasi: Jurnal Ilmu Hukum*, Vol. 8 Nomor 1 (2024): 13–26.

imprisonment, its mismanagement, and its deleterious social consequences,²⁵ It calls for a reorientation of Indonesian criminal law towards restorative justice, which promises not only legal effectiveness but also social harmony. The National Criminal Code (KUHP Nasional) attempts to embody this shift through provisions such as Article 70, which restricts the imposition of imprisonment when certain mitigating circumstances are present, that the imposition of imprisonment should not be imposed if one or more of the following elements are met: a. the defendant is a child; b. the defendant is over 75 (seventy-five) years old; c. the defendant has committed a crime for the first time; d. the victim's losses and suffering are not too great; e. the defendant has paid compensation to the victim; f. the defendant is not aware that the crime committed will cause great losses; g. the crime occurred due to very strong incitement from another person; h. the victim of the crime encouraged or motivated the crime to occur; i. the crime is the result of a situation that is unlikely to be repeated; j. the defendant's personality and behavior convince that he will not commit another crime; k. imprisonment will cause great suffering for the defendant or his family; l. rehabilitation outside of the correctional institution is expected to be successful for the defendant; m. imposing a lighter sentence will not reduce the serious nature of the crime committed by the defendant; n. the crime occurred within the family; and/or o. the crime occurred due to negligence.

The above provisions are still limited by stricter provisions, that efforts to exclude the imposition of imprisonment do not apply to: a. Criminal sanctions that are threatened with imprisonment of 5 (five) years or more; b. Criminal sanctions that are threatened with a special minimum sentence; c. Certain criminal sanctions that are very dangerous or detrimental to society; or d. Criminal sanctions that are detrimental to the state's finances or economy.

The revision of the National Criminal Code itself represents the mission of decolonization of Indonesian penal law through recodification. Furthermore, in the course of the history of this nation, the revision also includes various broader missions related to national and international development. The second mission is the mission of 'democratizing criminal law'. The third mission is the

²⁵ Thomas Sunaryo, in Fajar Ari Sudewo, "*Penology and Theory of Criminal Justice*", *loc.cit.*, 12.

mission of ‘consolidating criminal law’ because, since independence, criminal law regulations have experienced rapid development, both inside and outside the Criminal Code, with various different characteristics so it is necessary to rearrange them within the framework of the principles of criminal law as regulated in Book I of the Criminal Code. In addition, the preparation of the National Criminal Code is also based on the fourth mission, namely the mission of adaptation and harmonization with various legal developments that occur, both as a result of progress in the field of criminal law and the development of values, standards, and norms recognized by civilized nations in the international world.²⁶

It underscores a shift from purely retributive models towards restorative and preventive paradigms. In line with modern penological thought, Punishment is no longer a retaliation for the perpetrator’s mistake, but a means to achieve a useful goal to protect society towards prosperity. Sanctions are emphasized on their purpose, namely to prevent people from committing crimes, not aimed at absolute satisfaction of justice. This statement shows that punishment is not imposed *quia peccatum est* (because people commit crimes but rather *ne peccatum* (so that people do not commit crimes).²⁷

The core of this punishment reform is the principle of ultimum remedium, which posits that imprisonment should be the last resort in penal policy. In addition, the imposition of sanctions must accommodate the objectives of criminalization in the National Criminal Code, namely preventing future crimes, rehabilitating perpetrators of crimes, resolving conflicts, restoring social balance, ensuring a sense of security in society, and instilling a sense of regret and freeing the perpetrator from guilt.²⁸

In imposing a sentence, the judge must uphold not only the law but also justice, so that if there is a conflict between legal certainty and justice, then justice must prevail, and punishment must not be intended to degrade human

²⁶ Topo Santoso, *Indonesian New Criminal Code: Some Notes*, delivered in the International Webinar “Development of Criminal Code in Indonesia and the Netherlands”, Monday, September 23, 2024.

²⁷ Barda Nawawi Arief and Muladi, *Teori-Teori dan Kebijakan Pidana (Criminal Theories and Policies)*, (Bandung: PT Alumni, 2010), 11.

²⁸ Harkristuti Harkrisnowo, *Some Notes on the Indonesian Criminal Code*, delivered in the International Webinar “Development of the Criminal Code in Indonesia and the Netherlands”, Monday, September 23, 2024.

dignity, for crimes that are threatened with alternative punishments, the imposition of a lighter sentence must be prioritized if this is considered the most appropriate and supports the achievement of the purpose of punishment, namely judicial pardon which allows the judge to grant pardon, by considering things such as the lightness of the crime, the personal circumstances of the perpetrator, or the situation at the time the crime was committed and what happened afterward.

Then what are the options/choices for punishing the perpetrator as mentioned in the discussion of the articles above? The classification of fines within the National Criminal Code is a practical manifestation of this principle. Judges are now encouraged to consider fines over imprisonment in cases where custodial sentences of under five years are prescribed, provided certain criteria are met—such as the absence of a direct victim (*victimless crime*)²⁹, the victim's willingness to forgive, or the non-repetitive nature of the crime.³⁰ This aligns with the broader objective of restorative justice, which prioritizes conflict resolution, victim-offender reconciliation, and the reintegration of offenders into society without the stigmatizing effects of incarceration.

Comparative legal analysis reveals that this approach resonates with penal reforms in various civil law jurisdictions such as parole and community action have long been known in Europe,³¹ For example, in the Netherlands and Germany, fines and community sanctions have long been established as preferred alternatives to short-term imprisonment, both to reduce prison overcrowding and to avoid the criminogenic effects of incarceration. Indonesia's partial adoption of similar mechanisms—though still underutilized—is a progressive step towards aligning national penal policy with restorative and rehabilitative models prevalent in modern criminal justice systems.

²⁹ The definition of victimless crime can be found in Policy: Victimless Crime. This term is used to indicate illegal or prohibited acts that do not violate or threaten the rights of others, Erika Magdalena Chandra, "Victimless Crime in Indonesia: Should We Punished Them? Korban Tanpa Korban Di Indonesia: Harus Kita Menghukumnya? Introduction According to Joseph F. Winterscheid in His Article Victimless Crimes: The Threshold Question and Beyond, the D" 6, no. 2 (2019): 216–32.

³⁰ Indonesia, Law Number 1 of 2023 concerning the Criminal Code, Article 71.

³¹ Hans-jörg Albrecht, "Sanction Policies and Alternative Measures To Incarceration: European Experiences With Intermediate and Alternative Criminal Penalties," Policy Review 2 (1987).

Erasmus Napitupulu,³² Director of the Institute for Criminal Justice Reform (ICJR), has noted that while alternative sanctions such as community service and rehabilitation programs are recognized in sectoral laws like the Narcotics Law and the Juvenile Justice Law, their implementation remains sporadic. Law enforcement authorities and the judiciary continue to favor custodial sentences even for minor or first-time offenses. This tendency underscores the necessity for a cultural and institutional shift to fully operationalize the principle of *ultimum remedium* within Indonesia's criminal justice framework.

Then Erasmus said that the government together with the Dewan Perwakilan Rakyat/The House of Representatives (DPR), should optimize the concept of alternative punishment as a solution to overcome the problem of prison overcapacity which is increasingly becoming a complicated problem. This alternative punishment has not been able to be implemented optimally even though we already have several alternative punishments, in reality, law enforcement prefers to impose imprisonment as a decision for all types of crimes.

Accordingly, restorative justice must be repositioned as a foundational principle in Indonesian criminal law. The preference for imprisonment has perpetuated cycles of stigmatization, particularly for vulnerable groups such as children, where the labeling effect of incarceration can exacerbate delinquency rather than prevent it. Community-based sanctions like social work not only facilitate offender reintegration but also reflect the humanistic values inherent in Indonesia's communal and familial traditions of dispute resolution. This model, if effectively institutionalized, would represent a significant move towards a more humane, effective, and socially responsive criminal justice system.³³

³² Napitulu et al., "Hukuman Tanpa Penjara Pengaturan, Pelaksanaan, dan Proyeksi Hukuman Non Penjara Non Pemenjaraan di Indonesia" *ICJR*, 2019

³³ Ilham Panunggal Jati, "Implikasi Overcapacity Terhadap Lembaga Pemasyarakatan di Indonesia (Implications of Overcapacity on Correctional Institutions in Indonesia)" *Cepalo* 3, no. 2 (2019): 77, <https://doi.org/10.25041/cepalo.v3no2.1847>.

Aligning Immigration Law Enforcement and the Fine System

After the issuance of the National Criminal Code, there were several changes in the formulation of criminal penalties in Indonesia, the following is a table of the criminal penalties of the old Criminal Code and the criminal penalties of the National Criminal Code.

Table 2: Comparison of types of sanctions Criminal Procedures in the Old Criminal Code and the National Criminal Code

Norm Comparison	Old Criminal Code Law No. 1 Year 1946	National Criminal Code Law No. 1 of 2023
Form of punishment	a. main punishment: ³⁴ 1. death penalty; 2. imprisonment; 3. custodial sentence; 4. fine; 5. closure. b. additional punishment 1. deprivation of rights; 2. forfeiture of goods. 3. announcement of the judge's decision.	a. main punishment: ³⁵ 1. imprisonment; 2. fine; 3. supervision punishment; 4. closure; 5. social work punishment. b. additional punishment: 1. deprivation of rights 2. forfeiture of goods and/or bills 3. announcement of the judge's decision 4. payment of compensation; 5. revocation of license; 6. fulfillment of local customary obligation

³⁴ Moeljatno, Kitab Undang-Undang Hukum Pidana, Article 10.

³⁵ KUHP, "Undang Undang Nomor 1 Tahun 2023 tentang Kitab Undang Undang Hukum Pidana", Article 65.

		c. special punishment: death penalty which is always threatened as an alternative
Alternative punishment	As an alternative punishment if other main punishments (imprisonment and custodial sentence) are not imposed or cannot be implemented	Standalone as the main punishment which is an alternative sanction
Fines	The amount is based on the amount determined by the Criminal Code	Divided into categories, adjusted to the type of crime

Source: author's processing results from National Criminal Code

The comparison of the types of criminal sanctions between the Old Criminal Code and the National Criminal Code lies in the changes in the types of main criminal sanctions, the Old Criminal Code originally included the death penalty as the main criminal sanction, in the National Criminal Code the death penalty becomes a special punishment that is always given as a last alternative. In the Old Criminal Code, there was a custodial sentence, in the National Criminal Code the custodial sentence was abolished. Furthermore, the National Criminal Code added supervision and social work as main criminal sanctions, which were not previously in the Old Criminal Code.

In the National Criminal Code, it is also stipulated that in imposing a fine, the judge must consider the defendant's ability by paying attention to the defendant's real income and expenses,³⁶ and even though it accommodates the laws that exist in society such as customary law, and accepts customary dispute resolution, but regarding fines, the National Criminal Code stipulates that the decision to impose a fine, as well as the payment period,³⁷ must be through a

³⁶ Indonesia, *Law Number 1 of 2023 concerning the Criminal Code*, Article 80.

³⁷ *Ibid*, Article 81.

court decision,³⁸ which means that the fine decision cannot be imposed unilaterally and has the potential to conflict with the defendant's rights, this is to avoid an arbitrary attitude of demanding fines that blackmail the defendant and ensure the defendant's ability to fulfil his obligations.

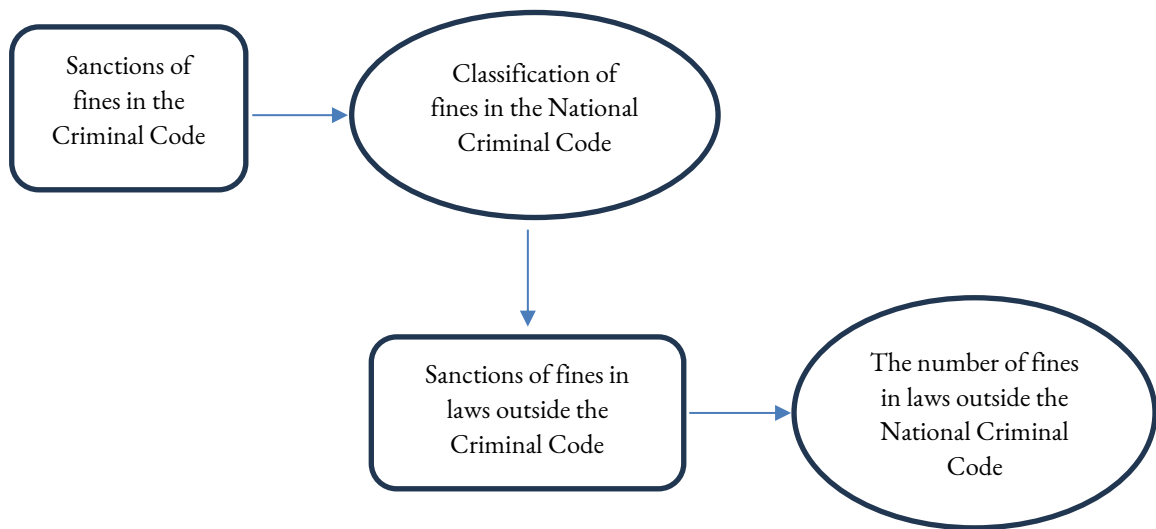
To maintain arbitrariness, the National Criminal Code determines the amount of the fine imposed by determining the category, which is formulated in Article 79 of the National Criminal Code, namely:

- (1) *The maximum criminal fine is determined based on:*
 - a. *category I, Rp. 1,000,000.00 (one million rupiah);*
 - b. *category II, Rp. 10,000,000.00 (ten million rupiah);*
 - c. *category III, Rp. 50,000,000.00 (fifty million rupiah);*
 - d. *category IV, Rp. 200,000,000.00 (two hundred million rupiah);*
 - e. *category V, Rp. 500,000,000.00 (five hundred million rupiah);*
 - f. *category VI, Rp. 2,000,000,000.00 (two billion rupiah);*
 - g. *category VII, Rp. 5.000,000,000.00 (five billion rupiah);*
and
 - h. *category VIII, Rp. 50,000,000,000.00 (fifty billion rupiah).*
- (2) *In the event of a change in the value of money, the provisions regarding the amount of the fine shall be determined by Government Regulation.*

The purpose of categorizing fines is to obtain a clear amount of the maximum fine listed for various criminal sanctions and to make it easier to make adjustments if there are economic and monetary changes.³⁹ Furthermore, the classification of fines in the National Criminal Code can be a reference for legislation outside the Criminal Code to determine the number of fines in its fine sanctions, as shown in the following chart:

³⁸ *Ibid*, Article 78.

³⁹ Criminal Code, *Loc. Cit*, explanation of Article 79.

Figure 1: The Position of Fines in National Criminal Law

Source: Author Analysis

The weakness of the formulation of fines in the Criminal Code is that it requires a judge's decision to be handed down through a trial, this is due to the following factors:

1. The imposition of a fine requires a process of proving the perpetrator's guilt in court because even though it is in the form of a fine, and is not a physical punishment such as imprisonment, the fine also causes misery to the convict because it causes a loss, in this case material.
2. Prevent arbitrary action in demanding the amount of the fine, so that the judge must decide the amount of the fine so that the fine given is balanced.

The fines in the Criminal Code can be a reference for legislation outside the Criminal Code in formulating its fines. In this discussion, one of the laws that has formulated fines in its legislation is the Immigration Law, in the Immigration Law the formulation of criminal sanctions is threatened from Article 113 to Article 136, with the types of sanctions being imprisonment, fines, and also imprisonment.

Table 3: The Position of Fine Sanctions in the Immigration Law

Chapter	Criminal Act Norm Formulation	Types of sanctions
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Article 113	entering or leaving Indonesian territory without going through an Immigration Checkpoint	maximum imprisonment of one year and/or maximum fine of one hundred million rupiah.
Article 114	(1) Person in charge of means of transport entering or leaving Indonesian territory not via TPI	maximum imprisonment of one year and/or maximum fine of one hundred million rupiah.
	(2) The person in charge of the means of transport drops off or picks up passengers not via the TPI	maximum imprisonment of two years and/or maximum fine of two hundred million rupiah.
Article 115	Every Person Responsible for the Means of Transport who does not pay the loading costs (Article 19 paragraph (4) and Article 79)	maximum imprisonment of one year and/or maximum fine of one hundred million rupiah
Article 116	Foreigners do not fulfill their obligations (Article 71)	maximum imprisonment of three months or maximum fine of twentyfive million rupiah
Article 117	The owner/manager of the accommodation does not provide information/does not provide data on foreigners staying there (Article 72 paragraph (2))	maximum imprisonment of three months or maximum fine of twentyfive million rupiah
Article 118	Every Guarantor deliberately provides false information/does not fulfill the guarantee (Article	maximum five years imprisonment And

	63 paragraph (2) and paragraph (3))	maximum fine of five hundred million rupiah
Article 119	(1) Foreigners entering and/or being in Indonesian territory without having valid and current Travel Documents and Visas (Article 8)	maximum five years imprisonment And maximum fine of five hundred million rupiah.
	(2) Foreigners intentionally use false or falsified Travel Documents	maximum five years imprisonment And maximum fine of five hundred million rupiah
Article 120.	(1) Any person who carries out human smuggling activities	minimum five years and maximum fifteen years in prison
	(2) Attempts to commit the crime of human smuggling shall be punished with the same penalties as referred to in paragraph (1).	And a minimum fine of five hundred million rupiah and a maximum of one billion five hundred million rupiah
Article 121.	Any person who makes a fake; falsifies; uses a Visa or Entry Mark or Residence Permit to enter or leave or be in the Territory of Indonesia.	maximum five years imprisonment And maximum fine of five hundred million rupiah
Article 122	Foreigners intentionally misuse Residence Permits; Everyone orders/gives foreigners the opportunity to misuse their Stay Permit.	maximum five years imprisonment And maximum fine of five hundred million rupiah
Article 123.	Any person who intentionally provides false/falsified letters/data/incorrect information	maximum five years imprisonment And

	to obtain a Visa or Residence Permit and any Foreigner who has the Visa/ Residence Permit to enter and/or be in the Territory of Indonesia.	maximum fine of five hundred million rupiah
Article 124	Any person who intentionally hides/protects/provides lodging/provides a living/gives employment to a foreigner who: is in Indonesian Territory illegally.	maximum imprisonment of two years and/or maximum fine of two hundred million rupiah
	Residence Permit expired	maximum imprisonment of three months or maximum fine of twenty five million rupiah
Article 125	Any foreigner who is in a certain area without permission which has been declared prohibited for foreigners as referred to in Article 48 paragraph (4)	maximum imprisonment of three years and/or a fine of three hundred million rupiah.
Article 126.	Everyone intentionally: Using a fake or falsified Republic of Indonesia Travel Document to enter/exit Indonesian Territory	maximum five years imprisonment And maximum fine of five hundred million rupiah
	Using other people's Republic of Indonesia Travel Documents/which have been revoked/which have been declared invalid to enter or leave	maximum five years imprisonment And maximum fine of five hundred million rupiah

	Indonesian Territory/handing over to other people their or other people's Republic of Indonesia Travel Documents for misuse	
	Providing invalid data /incorrect information to obtain a Republic of Indonesia Travel Document for oneself/another person.	maximum five years imprisonment And maximum fine of five hundred million rupiah
	Having/using unlawfully two/more Republic of Indonesia Travel Documents of the same type all of which are still valid	maximum five years imprisonment and a maximum fine of five hundred million rupiah
	Falsifying Republic of Indonesia Travel Documents/creating fake Republic of Indonesia Travel Documents to use for oneself or another person.	Maximum imprisonment of five years and a maximum fine of IDR 500,000,000.00 (five hundred million rupiah).
Article 127.	Every person deliberately keeps false or falsified Republic of Indonesia Travel Documents	maximum five years imprisonment And maximum fine of five hundred million rupiah.
Article 128.	Any person who intentionally prints, owns, stores/trades forms/stamps/other tools used to validate Republic of Indonesia Travel Documents/other Immigration Document forms.	maximum five years imprisonment And maximum fine of five hundred million rupiah

Article 129.	Any person who intentionally damages, changes, adds, reduces, or removes, in whole or in part, information or stamps contained in the Republic of Indonesia Travel Document or other Immigration Documents.	maximum five years imprisonment And maximum fine of five hundred million rupiah.
Article 130.	Any person who intentionally controls another person's Travel Document or other immigration document	maximum imprisonment of two years and/or maximum fine of two hundred million rupiah.
Article 131.	Any person who intentionally, without rights, or unlawfully owns, stores, damages, removes, changes, duplicates, uses, and/or accesses Immigration data, either manually or electronically.	maximum five years imprisonment And maximum fine of five hundred million rupiah.
Article 132.	Immigration officials/other officials intentionally provide Republic of Indonesia Travel Documents and/or provide or extend Immigration Documents to those who are not entitled	maximum imprisonment of seven years.
Article 133.	Immigration Officer or other official: a. Allowing the occurrence of immigration crimes in Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 126, Article 127, Article 128, Article 129, Article 130, Article 131, Article 132,	maximum imprisonment of five years;

	Article 133 letter b, Article 134 letter b, and Article 135	
	b. intentionally leaking confidential immigration data (Article 67 paragraph (2) and Article 68 paragraph (2))	maximum imprisonment of five years;
	c. intentionally not following standard operating procedures in the process of checking the departure or entry of foreigners into Indonesian territory (Article 13 paragraph (1))/exit of people from Indonesian territory (Article 16 paragraph (1))	maximum imprisonment of two years;
	d. not implementing standard operating procedures for guarding detainees in the Immigration Detention House or Immigration Detention Room, resulting in the detainee escaping	maximum imprisonment of two years;
	e. intentionally not entering data into the Immigration Management Information System (Article 70)	maximum imprisonment of six months.
Article 134.	Every Detainee intentionally: Makes, possesses, uses, and/or distributes weapons.	maximum imprisonment of three years;
	Escape from Immigration Detention House or Immigration Detention Room	maximum of five years in prison.

Article 135.	Any person who enters into a maximum five years sham marriage to obtain imprisonment Immigration Documents and/or And to obtain citizenship status of the maximum fine of five hundred Republic of Indonesia. million rupiah.
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Source: Author Analysis of the Immigration Law

This shows that in the Immigration Law which is special law, imprisonment is still the main sanction (*primum remedium*), and fines are still alternative sanctions.

From the table, it can be seen that the fines in the Immigration Law have not followed the provisions of fines that have been formulated based on the classification in the National Criminal Code, this is due to the novelty of the National Criminal Code, which only came into force after the Immigration Law was enacted (*lex posterior derogat legi priori*). Such formulation of fines in the Immigration Law causes the provisions of fines in the Immigration Law to still be alternative or cumulative with prison sanctions, imprisonment is still the main sanction (*primum remedium*), and fines are still alternative sanctions. Hence the nature of fines as the main criminal offense, so that as in the case of other criminal law violations, judges tend to impose prison sanctions on defendants.

However, in Immigration Law, there are 2 forms of law enforcement, namely through the imposition of criminal sanctions, and the imposition of Immigration Administrative Actions (hereinafter referred to as TAK)⁴⁰, the imposition of criminal sanctions in immigration is much less frequently applied compared to immigration law enforcement through the imposition of Immigration Administrative Actions/TAK, this can be seen in the following table:

⁴⁰ Republic of Indonesia, "Law Number 63 of 2024 concerning Immigration," Article 75.

Table 4: Comparison of Immigration Law Enforcement Between Criminal Penalties and TAK

Year	Enforcement of Immigration Law Through Criminal Penalties	Enforcement of Immigration Law Through TAK
2020	59	5105
2021	23	4231
2022	51	2435
2023	58	3351
2024	38	3207

Source: Sub. Directorate of Immigration Supervision and Enforcement, Directorate General of Immigration, data taken on March 2025

From the table above, it can be seen that there are more TAKs imposed on immigration violations,⁴¹ which are caused by several factors, *first*, Article 75 states that if a Foreigner carries out dangerous activities and is suspected of endangering public security and order or does not respect or does not obey laws and regulations, then the Immigration Officer is authorized to carry out Immigration Administrative Actions, this provision makes immigration officers impose TAK on Foreigners who violate immigration criminal regulations even if the foreigner violates general criminal provisions, by analogizing the act as violating the laws and regulations in force in Indonesia, even though there are separate sanctions provisions based on the wording of the violated law, this is due to other factors which will be mentioned in the next point.

Second, the trial process in sentencing is long and requires large costs. The criminal process in Indonesia, starting from the investigation, inquiry, prosecution, and examination in court to the verdict, takes a long time, the length of this process is correlated with the number of costs that must be incurred, especially if a crime involves a foreigner, for the foreigner the time

⁴¹ M. Alvi Syahrin, "Polarisasi Penegakan Hukum Keimigrasian Kontemporer: Aksiologi Normatif - Empiris," *Majalah Hukum Nasional* 49, No. 1 (2019): 59–89, <https://doi.org/10.33331/mhn.v49i1.93>.

spent in litigation in Indonesia is comparable to paying a certain fee, for example, a fine.

Third, unlawful acts (especially immigration laws) committed by foreigners (in some cases of violations), are considered not to be acts that result in major losses or no victims who are directly harmed, for example if a foreigner misuses a residence permit, which should be a tourist visa, but it turns out that the foreigner is doing a job that generates a certain amount of income, the impact of this act is not felt to cause losses or victims directly, even in some cases there is a mutually beneficial relationship.

Fourth, humanitarian reasons, in some cases, Foreigners violate immigration rules due to ignorance or negligence, without any intention of committing an unlawful act, let alone committing a crime. This raises empathy from immigration officers so that for humanitarian reasons, Foreigners are not given criminal penalties, but are only given TAK.

Several reasons above show that imposing TAK on foreigners (mostly deportation) is considered more effective and easier to apply in immigration crime violations, so the reality of the threat of prison sanctions is less than ideal, however, the imposition of TAK alone is considered insufficient, because the imposition of deportation alone is considered still unable to provide a deterrent effect on foreigners who commit immigration violations, this is proven by the large number of foreigners who repeat their actions.

The sanctions contained in the TAK are not like imposing suffering, as formulated in Article 75 of the Immigration Law, this is also suspected to be the cause of administrative immigration actions being deemed not to have a deterrent effect, the administrative immigration actions imposed are in the form of:⁴²

- a. inclusion in the Prevention or Deterrence list;
- b. restrictions, changes, or cancellation of Residence Permits;
- c. prohibition on being in one or more specific places in the territory of Indonesia;
- d. the requirement to reside in a certain place in the Territory of Indonesia;
- e. imposition of a burden fee; and/or

⁴² *Ibid.*

f. Deportation from Indonesian Territory.

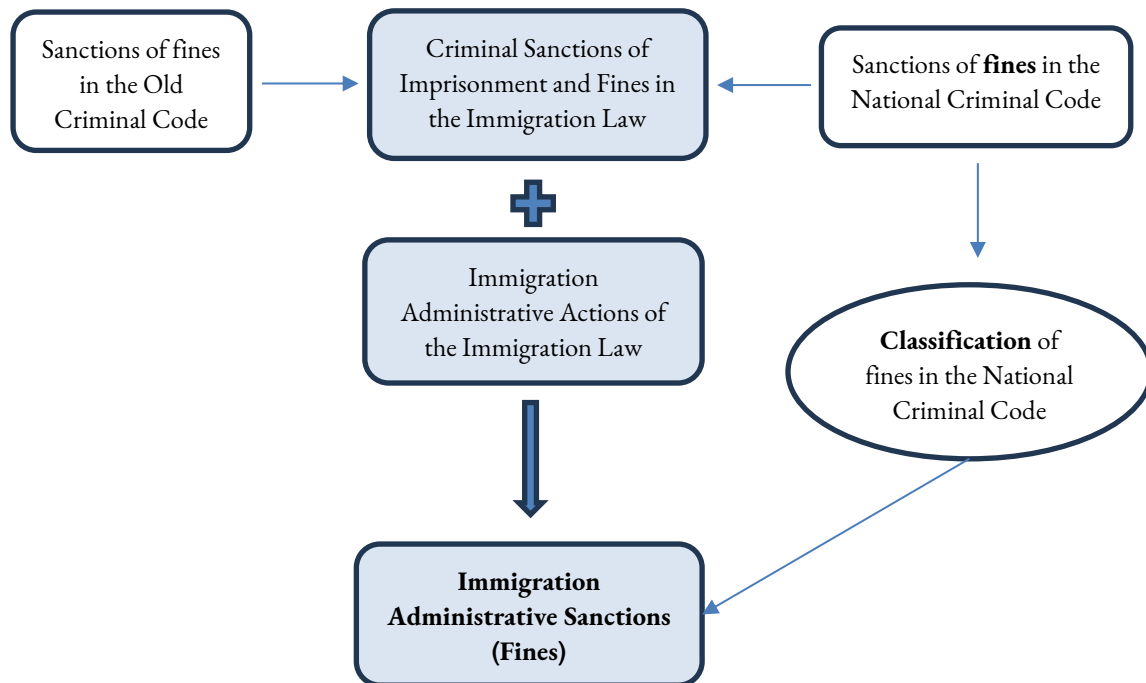
Administrative immigration actions imposed as stated in Article 75 of the Immigration Law above, do not yet have the type of sanction that provides the effect of 'suffering' as in the imposition of criminal sanctions, which is intended to provide a 'sense of loss' as something that provides a deterrent effect, so it is necessary to formulate sanctions that provide a sense of loss such as fines.

The imposition of fines for immigration violators must meet 2 supporting factors, first, is the factor of legal norms, legal norms, especially immigration administrative actions need to have adequate types of sanctions and provide a deterrent effect, for most people, fines can be an alternative because it is a detrimental thing because it results in the loss of ownership of an item. This fine sanction can refer to the qualifications of fine sanctions as stipulated in the National Criminal Code. Second, from the law enforcement factor, administrative sanctions must be sanctions that are easy to impose, for example with the TAK mechanism which is imposed without a trial stage, there is no need for the implementation of the criminal justice process which requires a trial stage that requires time and money, and requires a judge's decision in imposing fines.

Based on the discussion of the research, law enforcement against immigration violations is prescribed a sanction formulation that combines the 'practicality' of the TAK imposition process with the classification of fines that have been regulated in the National Criminal Code. The number of fines that have been classified in the National Criminal Code can be a reference for the number of fines that can be imposed on violators of the Immigration Law, which so far still uses the number of criminal fines in the formulation of norms of criminal penalties in the Immigration Law, which was formulated based solely on the consideration of criminality factors.

The collaboration between fine classification and TAK is depicted in the following flow:

Figure 2: Application of The National Criminal Code's Classification of Fines into a Special Law



The flow begins by describing the previous situation, namely the fines that already exist in the old Criminal Code, the fines contained in the old Criminal Code already state the amount of the fine, but have several weaknesses, such as being threatened as a maximum or minimum-maximum, which raises new problems in sentencing such as disparities in sentencing. Furthermore, in practice, fines are still applied as alternative or cumulative sentences, on the grounds of the complexity of fines as discussed previously, so judges tend to ignore fines and prioritize imprisonment which raises problems later, namely the *overcapacity* of prisons. In further developments, the National Criminal Code has included a classification of fines to overcome the potential disparity in fines and anticipate potential currency inflation.

De *jure*, in-laws outside the Criminal Code as *lex specialis*, many have threatened fines in their regulations, including the Immigration Law, but as in the old Criminal Code, in enforcing fines on special legal norms, the imposition of fines experiences similar obstacles. In the case of the Immigration Law which has so far implemented TAK and is considered more effective in terms of its process, consideration of collaborating between fines that have been classified

in the National Criminal Code with TAK in the Immigration Law is worth considering.

Conclusion

The fine criminal classification policy answers the need for alternative punishment as a solution to imprisonment which is increasingly ineffective in solving the problem of crime, and creates many new problems, with the hope that fines are no longer only positioned as an alternative punishment, but are seen as the main punishment that can become an alternative punishment rather than imprisonment.

In line with the philosophy of the National Criminal Code that prioritizes the principle of justice, fines are restorative and provide solutions to the sense of justice for victims who get restitution for the losses they experience, but still provide a deterrent effect for lawbreakers because the fines imposed on them result in material losses. The classification of criminal fines provides a benchmark for law enforcement, especially in special laws and regulations, including administrative fines, with the aim of first avoiding disparities in the imposition of fines in the future, secondly becoming a reference for the number of fines to provide convenience in determining the (administrative) fines that must be obeyed.

It is necessary to review the norms of immigration criminal sanctions to make the following efforts:

1. formulate sanction norms that prioritize restorative sanctions such as fines, the value of administrative fines is adjusted to the classification of fines as stipulated in the National Criminal Code.
2. the threat of criminal sanctions can still be given to violations whose value has a major impact on society, for example, people smuggling.
3. the mechanism for imposing immigration administrative fines, starting from the procedures for imposing sanctions to the execution mechanism can be designed as the imposition of TAK so as to avoid the time-consuming and costly process of criminal court proceedings all formulations and

formulations regarding immigration fines are carried out after discussions and studies involving all stakeholders.

The fine sanction classification policy answers the need for alternative punishment as a solution to imprisonment which is increasingly less effective in solving crime problems and giving rise to many new problems, with the hope that fine sanctions will no longer only be positioned as alternative sanctions, but will be seen as an alternative punishment.

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