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ARTICLE

Fragmentation and Localization of Criminal Norms After the 2023 Criminal Code: An Anthropological Fiqh Perspective in the Harmonization of National Criminal Legislation

Henin Dyah Syafrina*[1], Naura Tsurayya Hasnaa[2], Slamet Sudi Illahi[3], Bintang Pramadhani Hariadi Putra[4]

*Correspondence:
Henin Dyah Syafrina
[1, 2, 3, 4] Fakultas Hukum, Universitas Airlangga, Indonesia
Email: henin.dyah.syafrina-2025@fh.unair.ac.id,

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Abstract

Background: *The enactment of the 2023 Indonesian Criminal Code has restructured the national penal system through a unified sentencing framework grounded in rehabilitative and restorative principles. However, the persistence of criminal provisions in numerous sectoral statutes creates normative fragmentation and structural disharmony within Indonesia's criminal law system.*

Aims: *This article examines the phenomena of fragmentation and localization of criminal norms in the post-KUHP 2023 era through a fiqh anthropological perspective.*

Methodology: *Using normative and conceptual legal approaches enriched by legal anthropology analysis, this study argues that the harmonization process embodied in the Sentencing Adjustment Bill is not merely a technical legislative alignment but represents a deeper negotiation between codified national norms and socio-cultural legal consciousness.*

Results: *The abolition of mandatory minimum penalties and the realignment of fine categories illustrate the transition from rigid positivism toward contextualized penal policy.*

Implication: *From a fiqh anthropological standpoint, harmonization must integrate principles of maqāṣid al-sharī'ah, 'urf, and substantive justice to prevent disconnection between state law and lived legal realities. Therefore, the transformation of criminal provisions outside the Criminal Code is not only a structural reform but also an epistemological shift in Indonesia's criminal legislative policy.*

INTRODUCTION

Currently, it is oriented to the adage "a person cannot be punished with a punishment that is not in accordance with his deeds", that the imposition of criminal punishment is oriented towards retributive justice or revenge so that the criminal sanctions imposed are commensurate with the criminal act committed. This is in line with the theory of retribution, punishment does not aim to achieve a practical purpose such as correcting the criminal, but as a consequence of the crime being committed (*quia peccatum)*. This orientation of retributive justice is often no longer found in Law Number 1 of 2023 concerning the Criminal Code (hereinafter abbreviated as the 2023 Criminal Code). The 2023 Criminal Code changes the political form of criminal law in Indonesia from retributive justice to rehabilitative justice which includes corrective justice (perpetrators) and restorative justice (victims). This rehabilitative justice focuses on the perpetrator and the victim, where the perpetrator is not

only imposed criminal sanctions but also corrected so that he does not repeat his actions again, as well as the victim, not only is his rights restored but also corrected (Rapik, 2013).

The process of reforming the criminal law in Indonesia has been going on for a long time, the government has developed the concept of reform since 1977 (Febrianty et al., 2023). The development of criminal law outside the Criminal Code has shown very rapid dynamics in recent decades. This phenomenon cannot be separated from the fact that the development of law is influenced by social dynamics in society. Legal certainty requires that laws and regulations be drafted clearly, firmly, without causing many interpretations, and consistent. One of the most obvious problems is the inconsistency and lack of harmony in the formulation of criminal norms, both in terms of type, criminal threat, and the principles of criminal law applied (Khoirunnisa, & Didi Jubaidi, 2023; Zakariyah, 2014). This inequality creates legal inequality and confusion for law enforcement officials, especially in assessing proportionality for perpetrators of similar crimes but subject to different sanctions just because of the difference in legal basis.

The formulation of clear and precise criminal acts in laws and regulations is a must, this is because if the formulation is not designed with clarity and precision, it will result in a loss of legal certainty. In the Indonesian criminal law system, criminal acts are generally outlined in the form of codification. However, until now, there are no provisions that expressly regulate the guidelines and criteria in formulating criminal acts in criminal laws and regulations. This condition causes the emergence of various formulations of criminal acts that include elements beyond the characteristics of the act and its sanctions. As a result, many formulations of criminal acts, especially those outside the Criminal Code, are not in harmony with the structure of criminal acts or with the theory of separation between criminal acts and criminal responsibility.

Big in the criminal law system in Indonesia. This National Criminal Code not only updates criminal norms materially, but also brings a new approach that is more humane and does not emphasize retaliation alone (Shellaker et al., 2024). One example of the regulation in the National Criminal Code is the elimination of the classification between crimes and violations, regulations on the types of crimes, both principal and additional crimes, the categorization of fines, and new sanctions such as supervision and social work crimes. Indeed, this has become a major reform step, but this progress has not been followed by systemic reforms to hundreds of special laws outside the Criminal Code that still use a levy approach.

The difference between the National Criminal Code and the sectoral law when the National Criminal Code has come into force will create disharmony or overlap of criminal norms. There are laws and regional regulations outside the National Criminal Code that regulate criminal offenses that still use the threat of a special minimum penalty, imprisonment, and fines in a predetermined number without categories which have been regulated in the National Criminal Code. So that this creates a form of disharmony that can trigger overlap of laws. Furthermore, if there is no immediate regulation related to legal disharmony, it will cause confusion among law enforcement officials and judicial institutions when implementing the applicable law.

In response to such conditions, the establishment of a Criminal Adjustment Bill is important to be immediately passed and enforced. Deputy Minister of Law and Human Rights, Edward Omar Sharif Hiariej, emphasized that the adjustment of criminal provisions is a strategic step to harmonize the criminal law system with the National Criminal Code and the importance of coordination between law enforcement agencies so that the implementation of the National Criminal Code can be effective and fair (Singletary, 2024).

Therefore, the existence of this bill is a bridge between sectoral laws outside the Criminal Code and the National Criminal Code which will take effect later so that inconsistencies are not created.

These limitations show that there is an analytical gap in understanding the fragmentation of criminal norms after the 2023 Criminal Code. Fragmentation is not merely a matter of textual disharmony, but reflects the tension between national codification and the dynamics of values that live in society. Judicial practices that often deviate from the special minimum through the discretion of judges and the internal guidelines of the Supreme Court show that there is a negotiation between written norms and substantive justice. This phenomenon is rarely analysed through the perspective of legal anthropology or the theory of legal pluralism. In fact, in the context of a plural and religious Indonesian society, state law always interacts with social norms and religious values. It is this emptiness that demands a more integrative and contextual approach.

This article offers an anthropological fiqh perspective as an analytical framework to read the process of harmonization of criminal legislation. Anthropological jurisprudence is understood as an integration between the principles of maqāṣid al-shari'a, the concept of 'urf as a living norm, and legal anthropological theories regarding normative pluralism. Through this approach, harmonization is not seen simply as the unification of norms in a codification system, but as a process of localization and negotiation between state law and public legal awareness. Thus, the transformation of criminal provisions outside the 2023 Criminal Code is positioned as an epistemological shift in Indonesian criminal law politics. This approach provides a new dimension in reading the Criminal Adjustment Bill, not only as an administrative instrument, but as an arena for the reconstruction of criminal values.

Based on this background, this article aims to analyse the phenomenon of fragmentation and localization of criminal norms after the 2023 Criminal Code through the perspective of anthropological jurisprudence in the context of harmonization of national legislation. This article argues that the elimination of the specific minimum penalty and the adjustment of the category of fines are not merely technical steps, but a reflection of a paradigm shift towards a more contextual and humanist penal system. Harmonization of legislation must be understood as an integrative process between the national legal structure and the social-religious values that live in society. Without such an approach, codification has the potential to be detached from the normative reality that is the basis for legal legitimacy. Therefore, the reform of Indonesian criminal law requires an analytical framework that is able to bridge legal texts and collective legal awareness.

LITERATURE REVIEW

1. Legal Pluralism Theory

The theory of legal pluralism departs from the assumption that in one society there can be more than one system of norms that have regulatory power. State law is not the only source of social order, but rather co-exists with customary norms, religious norms, and social practices that develop organically (Isra & Tegnan, 2021). In the Indonesian context, legal pluralism is not just a theoretical concept, but a historical and sociological reality. The national legal system interacts with customary law, Islamic law, and social norms that are deeply rooted in people's lives. Therefore, criminal law reform cannot be separated from this pluralistic structure. Each national codification is always in a negotiation space with pre-existing norms.

Legal pluralism literature is generally used to explain the conflict between state law and customary law or religious law. A number of studies emphasize how formal law is often ineffective when it ignores the social norms that live in society. In the context of criminal law, legal pluralism is often discussed in relation to restorative justice and community-based settlement (Mohamad & Rideng, 2021). These studies show that the success of law enforcement depends on social acceptance of the norms applied. However, most research still places pluralism as a phenomenon outside of the national codification system. Rarely has research directly linked it to the process of harmonizing criminal legislation.

The gap in the literature lies in the fact that the theory of legal pluralism has not been used to read the fragmentation of criminal norms after the 2023 Criminal Code. Fragmentation is often understood as a matter of technical inconsistency, rather than as a reflection of the plurality of normative sources(Ash-shidiqqi, 2021). In fact, the existence of a specific minimum penalty and a fixed nominal fine in sectoral legislation can be understood as an expression of a different normative regime. This article offers novelty by interpreting the harmonization of legislation as a process of integrating normative pluralism in a single codification system. Thus, the Criminal Adjustment Bill does not just tidy up the legal text, but manages the plurality of norms that live in the national legal system.

In this study, the theory of legal pluralism serves as a foundation for understanding the fragmentation of norms as a structural phenomenon (Mudzhar, 2013). Harmonization is positioned as a mechanism of reconciliation between various normative sources that previously developed sectorally. This approach helps explain why the 2023 Criminal Code update does not automatically remove normative tensions. Legal pluralism provides a framework for reading the transformation of the special minimum criminal and the fine system as an effort to integrate norms in a single criminal architecture. Thus, the harmonization of legislation is seen as a process of consolidating plurality, not just administrative simplification.

2. *Anthropology of Law*

Legal anthropology views law as a product of culture that is born, develops, and is exercised in a specific social context. Law consists not only of normative texts, but also of practices, interpretations, and social experiences of society (El-Tobgui, 2023). This perspective emphasizes the concept of living law, which is a norm that is actually implemented and internalized in daily life. In the criminal context, the application of sanctions depends not only on the formulation of the law, but also on the perception of public justice and the social considerations of judges. Therefore, changes in the penal system must be understood as social transformation, not just legislative transformation.

Legal anthropology research is widely used to examine the effectiveness of formal law in pluralistic societies. These studies show that judges and law enforcement officials often carry out contextual interpretations of written norms. In criminal justice practice, anthropological studies have found that sociological considerations and community values often influence judges' decisions (Werbner & Werbner, 2020). However, the existing literature highlights more conflicts between state law and customary law in the context of civil disputes or agrarian conflicts. Relatively few studies have used legal anthropology to analyze the harmonization of the national penal system.

The theoretical gap lies in the lack of legal anthropology to read the practice of deviations from the specific minimum sentence as a form of normative negotiation. The practice of judges imposing penalties below a special minimum has been understood as an exception or deviation. This article offers a different approach by seeing it as a manifestation of living

justice. The novelty of this research lies in the reading of the harmonization of legislation as a process of adjustment between legal texts and social practices that have developed in the judicial space. Thus, harmonization is understood as a response to the anthropological reality of criminal law.

In this article, legal anthropology is used to explain that the elimination of specific minimums and the adjustment of the category of fines are a reflection of social practices that have taken place. This theory helps place judges' discretion as part of the dynamics of legal culture, not just textual violations. Harmonization of legislation is understood as an effort to adapt formal norms to living practices. This approach enriches normative analysis with a sociological dimension. Thus, the transformation of criminal provisions is positioned as a process of adapting the culture of national law.

3. Maqāṣid Theory

The theory of maqāṣid al-shari'a departs from the premise that the law aims to realize benefits and prevent harm. These goals classically include the protection of religion, soul, intellect, posterity, and property. In contemporary developments, maqāṣid is understood dynamically as a normative framework for assessing the substantive justice of a regulation. This approach emphasizes proportionality, balance, and protection of the public interest. In the context of punishment, maqāṣid rejects disproportionate punishment and does not bring social benefits. Therefore, the penal system must be assessed based on the purpose, not just the form of sanction (Nabilah et al., 2021).

The study of maqāṣid in modern legal literature is widely used to analyze family law reform, sharia economics, and public policy. In the field of criminal law, this theory is often associated with the concepts of restorative and rehabilitative justice. However, most research is still limited to theoretical normative discourse without linking it to the dynamics of national legislation. Rarely do studies use maqāṣid as a tool for the analysis of the harmonization of positive laws. In fact, maqāṣid has the potential to bridge the religious values and legal structure of the state (Muawaffaq, 2021) .

The emptiness of the research can be seen in the lack of use of maqāṣid to read the transformation of the special minimum penalty and the fine system as a shift in the orientation of benefit. The elimination of a specific minimum can be interpreted as an attempt to avoid disproportionate punishment. The adjustment of the fine category reflects flexibility in order to maintain social relevance. The novelty of this article lies in the integration of maqāṣid with the theory of pluralism and legal anthropology to build an anthropological fiqh framework(Asyur, 1999). Thus, the harmonization of legislation is understood as the process of realizing benefits in the context of the modern state.

In this study, the maqāṣid theory serves as a normative basis for assessing the direction of criminal reform after the 2023 Criminal Code. It provides a substantive justification for the elimination of the special minimum and the system of categorization of fines. This approach ensures that harmonization is not only oriented towards textual consistency, but also towards the goal of justice and benefit. The integration of maqāṣid strengthens the argument that criminal transformation is part of the reconstruction of values in national legal politics. Thus, anthropological jurisprudence becomes a conceptual framework that connects religious values, social reality, and the legal structure of the state

RESEARCH METHOD

This research is normative legal research with a conceptual and theoretical approach enriched by a legal anthropology perspective. The main focus of the research is to analyze the phenomenon of fragmentation and localization of criminal norms after the enactment of Law Number 1 of 2023 concerning the Criminal Code in the context of harmonization of national legislation. Normative law research was chosen because the issues studied are related to the construction of norms in laws and regulations and the relationship between criminal law regimes. However, in order to avoid a purely dogmatic approach, the analysis is expanded with the framework of legal pluralism and anthropological jurisprudence in order to read the dynamics between legal texts and social practices. Thus, this study not only examines the normative structure, but also interprets the transformation of legislation in a socio-cultural context.

The approach used includes three types. First, the legislative approach is carried out by examining the 2023 Criminal Code, sectoral laws that contain special minimum penalties and fine regulations, as well as the Criminal Adjustment Bill as an instrument of harmonization. This approach aims to identify forms of norm fragmentation and in synchronization of the criminal structure. Second, a conceptual approach is used to analyze the concepts of legislative harmonization, judge discretion, criminal proportionality, and the fine categorization system in modern criminal theory. Third, a theoretical approach is used to integrate the theory of legal pluralism, legal anthropology, and maqāṣid al-shari'a as an analytical framework in reading the process of localization of criminal norms.

The legal materials used consist of primary and secondary legal materials. Primary legal materials include the 2023 Criminal Code, relevant sectoral laws, Supreme Court Circulars, and the Criminal Adjustment Bill document. Secondary legal materials include academic literature on legal pluralism, legal anthropology, criminal theory, and maqāṣid al-shari'a, both in the form of books, scientific journals, and cutting-edge academic articles. In addition, court decisions that show the practice of deviations from the specific minimum penalty are analyzed as supporting data to see the dynamics of the application of norms.

The analysis technique used is qualitative-descriptive analysis with interpretive methods. The norms studied were systematically analyzed to identify patterns of fragmentation and the direction of criminal transformation. Furthermore, the norm is read through the lens of legal pluralism and anthropological jurisprudence to see how the harmonization of legislation functions as a process of integration between formal legal structures and social-religious values that live in society. With this method, the research not only produces normative descriptions, but also offers a conceptual construction of the harmonization of criminal legislation as an epistemological process in Indonesian legal politics.

RESULTS

1. Structural Fragmentation of Criminal Norms After the 2023 Criminal Code

The first findings show that the fragmentation of criminal norms after the 2023 Criminal Code is structural and systemic. The 2023 Criminal Code has built a new criminal architecture based on the elimination of special minimums and a fine categorization system. However, sectoral laws still maintain a specific rigid minimum and fixed fine nominal with extreme variations. This inconsistency gives rise to the dualism of criminal standards in a single national legal regime. Fragmentation occurs not only in the technical aspects of sanctions, but also in the philosophical orientation between the retributive and rehabilitative

paradigms. This shows that codification has not fully integrated sectoral regimes into a single national penal system.

Table 1. Pattern of Fragmentation of Criminal Norms

Aspects	Criminal Code 2023	Sectoral Law	Forms of Fragmentation
Special Minimum	Deleted (except for certain things)	Stay in effect	Discrepancy of judges' discretion
Fine System	Categories I–VIII	Fixed nominal	System disintegration
Orientation	Rehabilitative-restorative	Dominant retributive	Paradigm differences
Flexibility	Adaptive via PP	Stiff	Inequality of economic adaptation

This data shows that fragmentation is not just a problem of editorial inconsistency, but a conflict of criminal structures.

2. *Norm Localization through Judicial Discretion and Practice*

The second finding shows that there is a pattern of localization of criminal norms in judicial practice. A number of judges' decisions impose penalties below a special minimum with sociological and humanitarian considerations. The Supreme Court's Circular Letter provides discretion to consider peace, social conditions, and proportionality. This practice shows that formal norms are negotiated in the social space of the judiciary. The localization reflects the existence of living law in the national criminal system. Thus, the specific minimum provisions have been empirically adjusted through practice, even before legislative reforms were implemented.

Table 2. Norm Localization Patterns in Practice

Instruments	Forms of Localization	Anthropological Dimension
Judge's Decision	Verdict below the minimum	Contextual justice
SEMA 1/2017	Classicistic discretion	Negotiation of formal norms
SEMA 3/2023	Minimum deviation of narcotics	Living justice
Sociological considerations	Peace & harmonization	Social value of community

These findings suggest that localization is not an anomaly, but rather a response to the rigidity of norms.

3. *Harmonization of Legislation as an Integrative Process*

The third finding shows that the Criminal Adjustment Bill is a response to the fragmentation and localization that has taken place. Harmonization not only unifies the system of fines and abolishes special minimums, but institutionalizes practices that have developed in the social space of the judiciary. From the perspective of legal pluralism,

harmonization is the consolidation of a plurality of norms within a single codification framework. From the perspective of legal anthropology, harmonization is the adjustment of the text to social practice. From the perspective of maqāṣid, harmonization is an effort to realize proportionality and benefits in punishment.

Table 3. Harmonization Model Based on Anthropological Fiqh

Dimensions	**Fragmentation**	**Localization**	**Harmonization**
Structure	Norm dualism	Discretion	System integration
Social	Norm tension	Contextual practice	Regulatory adjustments
Value	Retributive vs Rehabilitative	Substantive justice	Proportionality & Massiveness

These findings confirm that the harmonization of criminal legislation is not just a technical step, but an epistemological process that integrates formal norms, social practices, and benefit values.

DISCUSSION (ALIGNED LEFT, BOOK ANTIQUA, BOLD, 12 PT, 1.0)

1. Elimination of Special Minimum Penalties in the Criminal Adjustment Bill

The special minimum penalty is a criminal threat with a restriction on the minimum sentence period with a certain time where this special minimum penalty only exists in certain laws outside the Criminal Code. The Criminal Code only recognizes the general minimum criminal sanction, which is 1 (one) day and applies to all criminal acts, both in the form of crimes and violations. According to Rabb (2020), theoretically the discussion of crime includes three things, namely the type of crime (*strafsoort),* the length of the criminal sanction (*strafmaat*), and the criminal rules (*strafmodus*). The special minimum penalty is included in the category of length of criminal sanctions related to the minimum criminal sanction in each criminal act formulated in certain articles. The enactment of this special minimum criminal sanction in the realm of criminal law is certainly inseparable from the existence of a principle (*lex specialis derogate legi generalis)* which means that a special law overrides a law of a legal nature.

There are various laws and regulations in Indonesia that expressly contain provisions regarding *special minimum penalties*. This provision is different from the general criminal rules in the Criminal Code because it sets the minimum criminal limit that must be imposed by the judge, so that the judge's discretion is more limited. The application of special minimum penalties is generally found in laws that regulate serious *crimes*, such as corruption, narcotics, psychotropics, and human trafficking. Therefore, it is necessary to make a comparison of some of these laws to see how the minimum criminal variation:

Table 4. Comparison of Specific Minimum Penalties in Some Laws

No.	Law	Article	Minimum Criminal Penalty

1.	Law Number 31 of 1999 concerning the Eradication of Corruption	Article 2 and Article 3	Article 2 (4 years) and Article 3 (1 year)
2.	Law No. 35 of 2009 concerning Narcotics	Articles 111 to 146	The minimum penalty starts from 1 year to 5 years depending on the article
3.	Law No. 5 of 1997 concerning Psychotropics	Article 59 paragraph (1)	4 years
4.	Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons	Article 2 paragraph (1)	3 years

In the Criminal Adjustment Bill, the provisions related to special minimum crimes regulated in the Law outside the 2023 Criminal Code are removed but are excluded for 5 special criminal acts that are accommodated in Chapter XXXV of Special Crimes of the 2023 Criminal Code. In the Criminal Adjustment Bill, several articles in the 2023 Criminal Code are amended which regulate the special minimum penalty, including Article 296, Article 297, and Article 299. Referring to previous judges' decisions, it was found that several judges' decisions often imposed criminal sanctions below the special criminal minimum as stipulated in the article. For example, Decision No. 64/PID/2012/PN Sigli, Decision No. 1/pid.sus/2016/PN Cag. and Decision No. 14/pid.sus/2016/PN Cag. That the judge sentenced the perpetrator to one year in prison on the basis of the perpetrator's cooperative nature during the trial and made the judge's consideration that the perpetrator still had a family that was his dependents so that the judge dared to decide the case under the minimum sanction set by law.[1]

In the Supreme Court Circular Letter Number 1 of 2017, it provides the authority for judges to break through the legality of the special minimum criminal law regulated in the Law itself, by providing several terms and conditions. As stated in the Formulation of Criminal Chamber Number 5, Regarding the Minimum Penalty for Perpetrators of Child and Adult Crimes but the Victim is a Child,

a. That if the perpetrator is a "child", the minimum provision of criminal threats does not apply (Article 79 Paragraph (3) of Law Number 11 of 2012).

[1] Endy Ronaldi, Dahlan Ali, and Mujibussalim, "The Implications of Judges' Decisions in Determining Sanctions Below the Minimum for Narcotics Crimes", Syiah Kuala Law Journal, Vol. 3, No. 1, April 2019, pp. 129 - 144.

b. That if the perpetrator is an adult, while the victim is a child, then seen in a casuistic manner, the Panel of Judges can impose a criminal sentence below the minimum, with special considerations, including:

1) There is peace and the re-creation of harmonization of the relationship between the perpetrator/family of the perpetrator and the victim/victim's family, by not demanding each other anymore and even married between the perpetrator and the victim, or the act is done consensually. This does not apply if the act is committed by the father against the biological / step-child, the teacher against his student.

2) There must be legal considerations seen from the juridical, philosophical, sociological, educational, preventive, corrective, repressive aspects and a sense of justice.

In addition to the above arrangements, SEMA Number 3 of 2023 also provides an affirmation that for the application of Article 114 paragraph (1) of the Narcotics Law, it is possible for the judge not to apply a special minimum criminal provision if the factual conditions of the case show that there are strong reasons to commit the irregularity. This provision illustrates that there is room for discretion for judges to enforce more substantive justice, even though the law has set a minimum penalty limit. Thus, even if the positive rule establishes a minimum threat, the judge can still consider various important aspects, such as the personal circumstances of the defendant and the social consequences of the criminal act committed. Even so, this flexibility does not mean that the judge can act arbitrarily, because every deviation must still pay attention to the principles of justice, legal certainty, and utility. SEMA only serves as a guideline, so its application must be in line with broader legal principles and still reflect fundamental values of justice.

Thus, juridically, in the future, the Panel of Judges in its consideration can include the provisions in SEMA Number 1 of 2017 and SEMA Number 3 of 2023 as a basis if the Panel of Judges will impose a penalty below a special minimum under certain conditions in accordance with applicable regulations (Zakariyah, 2015). The elimination of the special minimum penalty in the Criminal Adjustment Bill is essentially a correction to the ineffectiveness of the special minimum in practice. Although specific minimums are formulated to ensure that there is a threshold of justice that must not be exceeded, judicial practice shows that judges still sentence crimes below these limits in order to achieve substantive justice, as seen in various rulings (Muchtar et al., 2024). This confirms that the existence of specific minimums is not in line with the reality of law enforcement and tends to create tensions between the principle of legality and the need to fulfill justice. The elimination of special minimums in this context can actually align norms with practice, as well as expand the space for judges to adjust crimes to the individual characteristics of the case without having to carry *out judicial bypass* through SEMA Number 1 of 2017 and SEMA Number 3 of 2023.

Furthermore, the elimination of special minimums has become relevant within the framework of the 2023 Criminal Code penal system which has moved from a retaliatory paradigm to a rehabilitative paradigm, which places accountability, recovery, and social integration of perpetrators as the main orientation of criminalization (Zakariyah, 2009). This new system prioritizes proportionality, criminal individualization, and the restoration of social relations between perpetrators, victims, and the community. In such a context, the existence of a special minimum actually limits the judge's flexibility to assess the personal, social, and situational factors of the perpetrator. By removing special minimums, lawmakers provide space for judges to impose sentences that are more in line with the objectives of

rehabilitative punishment, so that punishment is no longer solely retribution-based but directed towards a more progressive approach with an emphasis on the three pillars of justice: corrective, restorative, and rehabilitative (Patten, 2021).

It is true that the elimination of specific minimums has the potential to widen the disparity in sentencing as the range of punishments becomes wider. However, the risk is not caused by the elimination of the minimum itself, but by the absence of binding criminal guidelines. The penal system, adopted by the 2023 Criminal Code, requires measurable, transparent, and objective penal parameters to prevent extreme disparities. Thus, the elimination of special minimums must be accompanied by the preparation of penal guidelines based on proportionality, the level of error, the impact, and the rehabilitative needs of the perpetrators so that consistency is maintained. As an example of Supreme Court Regulation Number 1 of 2020 concerning Criminal Guidelines Article 2 and Article 3 of the Law on the Eradication of Corruption Crimes.

Thus, the normative implication of the elimination of the special criminal minimum is not to weaken the penal system, but rather to strengthen the new orientation of punishment in the 2023 Criminal Code. This reform allows judges to render more contextual, proportionate and recovery-oriented rulings, while eliminating the practice of breaking through to special minimums that have so far obscured legal certainty. As long as it is followed by the establishment of comprehensive penal guidelines, the elimination of special minimums can be a strategic step to realize an adaptive, fair, and rehabilitative system that is the main feature of national criminal law reform.

2. *Criminal Adjustment of Fines in Laws Outside the Criminal Code 2023*

Criminal fines are a form of sanctions that have long been known in the legal system. However, the rules and their application always adjust to the development of society. The National Criminal Code (KUHP) through Law number 1 of 2023 is an important step in the reform of Indonesia's criminal law. One of the significant aspects regulated in it is the existence of a new mechanism in the enforcement of criminal fines (Gagliardi et al., 2023). A fine is the obligation of the perpetrator of a criminal act to pay a sum of money to the state, which is actually known as the main crime in the old Criminal Code. In the 2023 Criminal Code, the regulation regarding fines has a different character. In the 2023 Criminal Code, fines appear as one of the main crimes as stated in article 65 paragraph (1) along with imprisonment, cover penalties, supervision penalties, and social work penalties (Patten, 2021). The amount of the criminal fine in the 2023 Criminal Code is generally determined through a category system, namely:

a. Category I: IDR 1,000,000
b. Category II: IDR 10,000,000
c. Category III: IDR 50,000,000
d. Category IV: IDR 200,000,000
e. Category V: IDR 500,000,000
f. Category VI: IDR 2,000,000,000
g. Category VII: IDR 5,000,000,000
h. Category VIII: IDR 50,000,000,000

The regulation of fines based on this category is intended to provide clarity regarding the maximum limit of fines in various criminal acts, as well as facilitate adjustments in the event

of changes in economic and monetary conditions (Shibamoto, 2023). By looking at the rise and fall of the value of the currency, the amount of the fine can be adjusted in the future through Government Regulations. This mechanism makes the regulation of fines more flexible and responsive to the development of economic and social conditions, without waiting for changes in the law and the value of fines can remain relevant from time to time (Muchtar et al., 2024). In addition to changes to the nominal system of fines, the 2023 Criminal Code also gives a greater role to judges in determining the criminal fine. As stated in Article 80 of the 2023 Criminal Code, the judge must assess the defendant's economic condition in a real way, including his level of income and expenses, without reducing the special minimum that has been determined by law (Gao, 2022). In addition, Article 81 stipulates that the fine must be paid within the period stipulated in the judge's decision. The payment can be made in a lump sum or through installments. If the fine is still not settled, the convict's assets can be confiscated and auctioned as an effort to fulfil his fine obligations.

Criminal acts that are regulated outside the 2023 Criminal Code are often referred to as *strafbaar feit* in special or sectoral laws are an unavoidable reality of the development of modern criminal law. Although its existence is intended to answer specific needs in various fields, such as corruption, narcotics, the environment, human trafficking, and cybercrime, criminal regulations outside the 2023 Criminal Code also have important consequences for the structure, harmony, and integrity of the national criminal law system as a whole . The number of criminal regulations in various sectors causes overlapping regulations. The existence of diverse sectoral criminal laws is also an obstacle in the implementation of the 2023 Criminal Code which has been ratified through Law Number 1 of 2023.

Table 5. Comparison of Criminal Fines in Several Laws

No	Law	Article	Amount of Fine	Categories of the 2023 Criminal Code
1.	Law Number 31 of 1999 concerning the Eradication of Corruption	Article 2	IDR200,000,000,00 - IDR1,000,000,000,00	Categories IV - V
2.	Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes	Articles 7 - 9	Maximum fine of Rp.100,000,000,000.00	Beyond category VIII
3.	Law Number 3 of 2020 concerning Mineral and Coal Mining	Article 158	Maximum fine of Rp.100,000,000,000.00	Beyond category VIII
4.	Law Number 10 of 1998 concerning Banking	Article 49 paragraph (1)	Rp.10,000,000,000,00 - Rp.200,000,000,000,00	Categories VII - VIII (Beyond category VIII)

5.	Law Number 6 of 2011 concerning Immigration	Article 120	Maximum fine of Rp.1,500,000,000.00	Excluded from category

Based on the table, it can be seen that most sectoral laws stipulate fines that far exceed the highest category in the Criminal Code (Category VIII). For example, Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering and Law Number 3 of 2020 concerning Mineral and Coal Mining contain the threat of fines of up to Rp100 billion which is clearly above the limit of category VIII. Law Number 10 of 1998 concerning Banking also lists the amount of fines that exceed the categories provided in the 2023 Criminal Code. With the enactment of the 2023 Criminal Code, which establishes a system for the criminal category of fines, it should become a new standard in the formulation of the threat of fines in all laws and regulations. However, a number of sectoral laws still maintain the determination of fines in a fixed nominal form and have not adjusted them to the new categorization system.

Legal problems arise when there is an inconsistency between the criminal regulation of fines in the New Criminal Code and various laws outside the Criminal Code. This condition creates the potential for *overlapping* regulations that lead to legal uncertainty, thereby reducing the effectiveness of law enforcement. After the enactment of the 2023 Criminal Code, a number of issues have arisen. Adjustments in the 2023 Criminal Code, especially related to the regulation of fine classification, have the potential to be inconsistent with the criminal provisions of the sectoral law (Khoirunnisa, & Didi Jubaidi, 2023). The existence of various sectoral criminal laws is also an obstacle in the process of reforming the national criminal law. Although the new Criminal Code was drafted as a form of modern codification that is more comprehensive and adaptive to the dynamics of community development, the existence of regulations outside the Criminal Code that have not been adjusted can result in its implementation not running effectively. Without systematic and sustainable harmonization, such sectoral regulations have the potential to remain a source of conflict of norms and prevent the National Criminal Code from functioning fully as a *lex generalis* in the criminal law system.

Laws Outside the Criminal Code after the Criminal Adjustment Bill has been passed, it no longer states the nominal figure of fines rigidly, but simply refers to the category of fines I to VIII in accordance with the 2023 Criminal Code. This categorization system makes the norm of sanctions simpler and more adaptive where lawmakers simply determine the relevant categories for a criminal act, without the need to include a certain number of rupiah (Aziz, 2021). The main advantage in this case is the flexibility in the value of the fine to the amount of the fine as formulated in Article 79 of the 2023 Criminal Code. If in the future there is a change in the value of the currency, it will be adjusted again through government regulations so that the value of the fine remains relevant without having to wait for changes in the relevant laws.

Not all criminal provisions of fines in the Law outside the Criminal Code are automatically changed to a category system. Laws that stipulate fines based on multiples of losses or profits (for example, the Tax Law with a fine of 2x the amount of unpaid taxes, or Law Number 28 of 2002 concerning Buildings) are exempt from nominal conversion to categories (Berkes, 2021). This exception aims to keep the special character of sanctions in certain areas to remain effective.

As a mandate of Article 613 of the 2023 Criminal Code, the Government, the House of Representatives, the DPD, and the DPRD at the regional level must review existing regulations. Although this will add to the short-term national legislation, it is an investment towards national criminal law uniformity. Without any adjustments, after the enactment of the new Criminal Code (as of January 2, 2026) there will be disharmony and confusion about the amount of sanctions in the old law. Therefore, the Criminal Adjustment Bill is projected to be completed before the 2023 Criminal Code takes effect, so that all criminal sanctions, especially the categorization of fines outside the Criminal Code, are synchronized. The government will need to emphasize the importance of socialization and uniformity of understanding for regulators, so that the formulation of penalties at the central and regional levels will refer to the new principles of the 2023 Criminal Code consistently (Khoirunnisa, & Didi Jubaidi, 2023).

The alignment of the criminal justice system requires close coordination between law enforcement officials such as the police, prosecutor's office, courts, and correctional institutions. Edward O.S. Hiariej emphasized that in order for the implementation of the 2023 Criminal Code to run effectively and fairly, coordination between institutions is absolutely necessary. All law enforcement officials must be in line in implementing the category of fine sanctions so that there is no disparity in handling. To support this, there needs to be an update in internal regulations and SOPs that adjust to the development of existing rules. For example, police investigators must adjust the format of the Examination Report (BAP) and the article of suspicion with the threat of a fine category instead of a certain nominal.

In handling cases during transition periods (before and after the 2023 Criminal Code comes into effect), law enforcement officials must prioritize the principle *of lex favor reo*. This principle emphasizes that if between the new law or the old law, the application of the law must use which law is more favorable to the defendant. For cases that already have permanent legal force but the sanctions are heavier than the new provisions, correctional officers need to carry out adjustments such as the release of convicts if the act is no longer punished or change the criminal execution in accordance with the new rules. All of these require coordination between each law enforcement agency so that the rights of convicts are protected and there is no misappropriation of the law.

For the public, the alignment of the fine system will change the general experience of criminal sanctions. Petty crimes that used to be able to lead to short jail time now tend to end up in the payment of fines. The positive implication is that the perpetrator's family will no longer be affected by the handling of their members for minor offenses, for example, street vendors without a permit will not receive imprisonment but a fine is enough. This will reduce social stigma and economic disruption due to short imprisonment. This policy will foster new legal awareness, the public understands that punishment does not always mean imprisonment but there are other forms of accountability that are more efficient such as the payment of fines. So this new approach tends to be more proportionate punishment.

The adjustment of the category of fines in laws outside the Criminal Code will strengthen the certainty of national law. On the other hand, the law regulating criminal sanctions for fines that exceed the highest category in the 2023 Criminal Code, namely Category VIII of Rp. 50,000,000,000.00 (fifty billion rupiah) is not regulated. For example, in Law Number 6 of 2023 in Article 74 which amends several provisions in Law Number 16 of 2012 concerning the Defense Industry which provides a sanction of Rp. 100,000,000,000.00 (one hundred billion rupiah). This indicates that the alignment of fine categories also cuts the maximum fine in laws outside the Criminal Code as well.

The alignment of the criminal and fine system in laws outside the Criminal Code against the 2023 Criminal Code is a strategic step in building harmonization and uniformity of national criminal law. This reform not only simplifies the norm of sanctions, but also increases the flexibility to adjust the value of fines without having to revise laws outside the Criminal Code continuously. However, the alignment process cannot stop at regulatory changes alone; Effective implementation requires cross-agency coordination, SOP updates, and strengthening the capacity of law enforcement officials so that the implementation of the fine category runs consistently without causing disparities. For the community, this reform brings benefits in the form of more proportionate and humane punishment, especially for minor offenses that no longer have to lead to imprisonment. However, the existence of a maximum limit on the category of fines in the 2023 Criminal Code also requires further evaluation of sectoral laws that contain very high fines so that there are no contradictions in norms. Thus, the adjustment of the fine penal system is not just a technical harmonization, but an integral part of the great transformation in Indonesian criminal law politics that prioritizes legal certainty, proportionality, and fair law.

3. Harmonization as a Maqāṣid-Based Reconstruction

The third finding shows that harmonization through the Criminal Adjustment Bill represents a reconstruction of the criminal paradigm towards a more proportionate and adaptive system. The elimination of special minimums and the nominal conversion of fines into categories indicate a shift from rigidity to flexibility. This reform is in line with the rehabilitative orientation of the 2023 Criminal Code. Harmonization not only unites norms, but builds consistency of the criminal paradigm. Thus, harmonization is an integrative process that is structural and value-based. It is the foundation for the sustainability of criminal reform.

Harmonization is needed because without system integration, the 2023 Criminal Code will not be effective as a lex generalis. So what about harmonization is the creation of systemic certainty and consistency of national penalties. Without harmonization, fragmentation and localization will continue in the form of a conflict of norms. Harmonization also ensures that criminal transformation does not stop at the rhetoric of legislation. Integrated reform strengthens the legitimacy of national law. Therefore, harmonization is a condition for the success of the new codification.

In the perspective of maqāṣid al-shari'a, harmonization is the realization of the principles of benefit and proportionality (Kamali, 2012). Rigid special minimums have the potential to create injustice, while flexibility allows consideration of social benefits. The fine category system maintains a balance between certainty and adaptability. The integration of pluralism, legal anthropology, and maqāṣid forms the framework of anthropological jurisprudence. Harmonization is understood as an epistemological reconstruction that connects formal norms and benefit values. Thus, criminal reform becomes a transformation of values, not just technical.

These findings expand the harmonization debate from legislation issues to value and paradigm issues. This article places maqāṣid as a normative foundation in reading the modern state criminal reform. Thus, the discourse of Indonesian criminal law is inseparable from the basis of contextual religious values. This research integrates socio-legal approaches and Islamic legal theory in one analytical framework. This enriches the literature on criminal reform in plural countries. Harmonization is positioned as a cross-value integrative process (Murengo, 2017).

Theoretically, this study introduces anthropological jurisprudence as a model for harmonization analysis of criminal legislation. This framework can be used to read other legal reforms in a plural system. Applicative, lawmakers need to ensure that harmonization pays attention to the dimensions of proportionality and rehabilitation. Law enforcement officials need to understand reform as a paradigm change, not just a change in articles (Devi & Hamid, 2024). The evaluation of sectoral regulations must be based on uniformity of penal values. Thus, harmonization can strengthen the consistency, legitimacy, and fairness of the national criminal justice system.

CONCLUSION

This study concludes that the fragmentation of criminal norms after the 2023 Criminal Code is a structural consequence of the coexistence of the old criminal regime in sectoral laws with the new criminal architecture introduced through national codification. This fragmentation is not just a technical inconsistency, but a reflection of normative pluralism in the Indonesian legal system. The dualism between the specific minimum and the fine categorization system shows that criminal law reform has not been fully systemically integrated. Without harmonization of legislation, the 2023 Criminal Code has the potential to lose its effectiveness as a general framework for national penalties. Therefore, criminal reform requires the consolidation of a comprehensive normative structure.

The findings of the study also show that the localization of norms has taken place in judicial practice through judicial discretion and institutional legitimacy provided through Supreme Court policies. This phenomenon shows the negotiation between written norms and substantive justice in a concrete social context. From the perspective of legal anthropology, the practice is a manifestation of living law that shows that formal norms are not always able to accommodate the complexity of social realities. The elimination of specific minimums in the harmonization process can be understood as the institutionalization of the practice of localization that has developed. Thus, legislative reform reflects a response to the dynamics of national legal culture.

Furthermore, the harmonization of legislation through the Criminal Adjustment Bill represents a reconstruction of the criminal paradigm that is in line with the principles of proportionality and benefit. Within the framework of maqāṣid al-shari'a, this transformation reflects a shift from retributive rigidity to a more rehabilitative and adaptive system. The integration of legal pluralism, legal anthropology, and maqāṣid forms the framework of anthropological jurisprudence as a conceptual model for harmonizing criminal legislation. The theoretical contribution of this research lies in the development of the model as an integrative approach in reading legal reform in a plural society. Applicative, these findings affirm the importance of harmonization based on uniformity of penal paradigms, the preparation of comprehensive penal guidelines, and consistency of cross-institutional implementation. Thus, the transformation of criminal provisions outside the Criminal Code is not only a technical reform, but a strategic step towards a more coherent, contextual, and fair national criminal law system.

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