



Ius Constitutum and *Ius Constituendum* Provisions Peace Fine in Indonesia

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Abstract

Study This aim for knowing and analyzing arrangement about provision fine peace in law positive Indonesia and how *Ius Constituendum* fine peace to achieve principle certainty law and justice law, as well as harmonization its implementation. The research method used is normative legal research with a statutory approach, a conceptual approach, a historical approach, and a comparative approach. Based on the research results, it shows that the regulation of peace fines in economic crimes is regulated in Article 35 paragraph (1) letter k of the Prosecutor's Office Law, Article 65 letter i, and Article 66 of the new Criminal Procedure Code, which regulates peace fines as a mechanism for terminating cases outside the court. However, the absence of implementing regulations has created a lack of clarity in the norms, so that it is necessary to establish technical regulations regarding the procedures for their implementation. Through comparison with Belgium and the Netherlands which already have a clear legal basis and implementation procedures, it is hoped that a Government Regulation will soon be formed in Indonesia containing detailed, clear and firm rules regarding the procedures for implementing peace fines to realize legal certainty, legal justice, and harmonization of implementation for all economic crimes that can be subject to peace fines in Indonesia.

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1. Introduction

There have been changes to the Attorney General's Law, namely with the issuance of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. This amendment to the Attorney General's Law regulates settlement fines for economic crimes. Indonesia is certainly not the first country to implement settlement fines, as the restorative justice paradigm had already developed rapidly in the 1990s in the United States, New Zealand, the United Kingdom, and Belgium ^[1]. Settlement fines have long been known in European countries, especially Western European countries such as Belgium, the Netherlands, France, and Germany. Although the terms used in these countries are not settlement fines, the mechanism for resolving criminal cases at the prosecutor's office without filing a prosecution and instead paying a fine, thus not resulting in a criminal record, similar to the settlement fines in Indonesia. These Western European countries have provided clear regulations regarding the definition of a settlement fine and the procedures for its implementation. Meanwhile, in Indonesia, the procedures for imposing settlement fines are stipulated in specific laws for economic crimes, such as Law Number 7 of 2021 concerning the Harmonization of Tax Regulations, Law Number 10 of 1995 concerning Customs, and Law Number 11 of 1995 concerning Excise.

¹Annemieke Wolthuis *et al.*, "Dutch Developments: restorative justice in legislation and in practice", *The International Journal of Restorative Justice*, Vol. 2(1), 2019, p. 117.

However, the procedures for imposing settlement fines are not regulated in each law for each crime classified as an economic crime. For example, banking crimes, unfair business competition crimes, crimes related to intellectual property rights and trademarks, and other economic crimes do not yet regulate the procedures for imposing settlement fines.

The dilemma regarding the provisions for the implementation of peace fines that can be applied to all economic crimes as regulated in the Prosecutor's Office Law has finally been resolved. Currently, Law Number 20 of 2025 concerning the new Criminal Procedure Code (KUHAP), which was ratified on November 18, 2025, is here to answer the provisions for the procedures for implementing peace fines. The new KUHAP stipulates that further provisions regarding the procedures for implementing peace fines are regulated by Government Regulations. Therefore, research is needed regarding the concept of provisions for the procedures for implementing peace fines for all economic crimes that need to be regulated in the future, which is the authority of the prosecutor's office, in order to provide legal certainty and restorative justice.

Starting from this problem, the author is interested in conducting research with the title "Ius Constitutum and Ius Constituendum Provisions" Peace Fines in Indonesia" is due to the need to conduct a comprehensive study on how to regulate the provisions of peace fines in Indonesian positive law and how *the Ius Constituendum* of peace fines is so that the principles of legal certainty and legal justice are achieved, as well as harmonization of their implementation, so that they can be used as a reference for the Indonesian Government in drafting the concept of procedures for implementing peace fines in the future.

2. Research Method

The research method used in this research is normative legal research. Normative legal research, also known as doctrinal legal research, is conceptualized as what is written in legislation or law, conceptualized as rules or norms that form the basis for human behavior deemed appropriate ^[2]. This research will focus on legislation related to the regulation of settlement fines.

3. Discussion

3.1. Arrangement About Provisions on Peace Fines in Indonesian Positive Law

Draft fine peace has recognized in various system laws in the world and are used as tool For finish cases with fast, avoiding court proceedings long and expensive. Use fine peace in action criminal economy by Prosecutor's Office in line with regulation legislation and approaches unconventional, as well as consistent with provision settlement case criminal offences regulated courts in a number of Constitution ^[3].

In Article 35 Paragraph (1) Letter k of the Law Number 11 of 2021 concerning Changes to the Law Number 16 of 2004 concerning The Attorney General's Office of the Republic of Indonesia regulates that the Attorney General has duties and authorities handle action crimes that cause loss the country's economy and can use fine peace in action criminal economy

based on regulation legislation. Then arranged more carry on in explanation of Article by Article in explanation of Article 35 Paragraph (1) Letter k states that:

"The State Economy Is Life" structured economy as Community - based joint efforts principle family or business public in a way based on independence on policy Government, both at the level center and in the region in accordance with provision regulation legislation that aims give benefits, prosperity, and well-being to all over people's lives.

What is meant is with a " fine" peace" is termination external matters court with pay fines approved by the Attorney General.

Use fine peace in matter action criminal economy is one of the form implementation principle opportunities that the Attorney General has in action criminal taxation, action criminal customs, or action criminal economy other based on Constitution."

Based on Article 35 paragraph (1) letter k of the Law Prosecutor's Office said, can concluded that action criminal the intended economy can charged settlement law in a way fine peace is action detrimental crimes the country's economy. Of course coverage action detrimental crimes the country's economy is very wide, because in line with definition action criminal economy in a way wide, he covering action criminal other patterned ones or patterned economy or cause loss the country's ^[4] economy in it.

Arrangement about fine peace which is principle the Attorney General's opportunity only arranged in Article 35 paragraph (1) letter k of the Law Prosecutor's Office and in explanation of each article only. More carry on about category action criminal economy which is details mentioned, how is the termination process prosecution and how determination fine No own rule implementation more carry on.

For a number of action criminal economy like action criminal economy like action criminal economics in the field taxation, action criminal economics in the field customs, and actions criminal economics in the field excise fine peace This Already start applied. This is due to the law special they Already stated inside it about rule implementer termination case with pay fines, such as Constitution Banking, Law Customs and Law Excise. The provisions that become reference For operate implementation fine peace as regulated in each law special third action criminal economy is as following.

3.2. Provisions on procedures for implementing peace fines in economic crimes in the taxation sector

The Attorney General's termination of a criminal case is regulated in Article 44B of Law Number 7 of 2021 concerning the Harmonization of Tax Regulations. The Taxation Law details the procedures and regulations for implementing the Attorney General's termination. The explanation of the article even stipulates the amount of the fine to be paid. One example of an economic crime in the tax sector that was resolved through a settlement is the case involving suspect Slamet Syamsul Huda, President Director

²Amiruddin & Zainal Asikin, *Introduction to Legal Research Methods*, 6th Edition, PT. Rajagrafindo Persada, Jakarta, 2012, p. 118.

³Baren Sipayung *et al.*, "Peace Fines in Economic Crimes: The Perspective of the New Criminal Code and International Developments." *JIP-Scientific Journal of Educational Sciences*, 8(2), 2025, p. 2014.

⁴Indra Gunawan, "The Use of Peace Fines in Economic Crimes." *The Prosecutor Law Review*, 1(2), 2023, p. 76.

of PT Bahtera Cipta Anugrah, from the East Java Directorate General of Taxes ^[5].

3.3. Provisions on procedures for implementing peace fines in economic crimes in the customs sector

According to Article 1 number 1 of Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs, Customs is defined as everything related to the supervision of the flow of goods entering or leaving the customs area and the collection of import duties and export duties. In *the self-assessment*, importers are also required to report the tariffs and customs value of the goods they import.

Article 16 of Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs states that customs officials are authorized to determine customs tariffs and values for calculating import duties before submitting a customs notification or within a period of thirty days from the date of the customs notification ^[6].

In Law Number 10 of 1995 concerning Customs, there is an Article that regulates the authority of the prosecutor's office in stopping a case, this is regulated in Article 113. Based on Article 113 paragraph (1) of the Customs Law, the Minister of Finance requests the Attorney General to stop the investigation of a criminal act in the Customs sector for the benefit of state revenue. The Attorney General can stop the investigation of a criminal act in the Customs sector at the request of the Minister of Finance. The termination of the investigation of a criminal act in the Customs sector can only be done after the violator pays the import tax that has not been paid or has not been paid, plus four times the administrative sanction or has not been paid. Import tax This is law regulated customs in Article 113 (2) of the Law Customs ^[7].

3.4. Provisions on procedures for implementing peace fines in economic crimes in the excise sector

Law Number 11 of 1995 concerning Excise in Article 64 regulates the termination by the Attorney General. On November 22, 2023, Government Regulation Number 54 of 2023 concerning the Termination of Investigation of Criminal Acts in the Excise Sector for the Interest of State Revenue was stipulated and promulgated. This Government Regulation is an implementing regulation of the Excise Law which regulates the application of formal criminal procedure law specifically regarding the termination of investigation of criminal acts in the excise sector. The amount of fines or sanctions that must be paid as well as the procedures for implementing the termination of investigations have been clearly regulated in the Government Regulation. Then, in Article 10 paragraph (2) of Government Regulation No. 54 of 2023 concerning the Termination of Investigation of Criminal Acts in the Excise Sector for the Interest of State Revenue, it is regulated that *"Further provisions regarding the procedures for terminating Investigations of criminal acts in the excise sector for the interest of state revenue are regulated by the Prosecutor's Regulation."*

Based on this, the Republic of Indonesia Attorney General's

Regulation (PERJA) Number 5 of 2024 concerning Procedures for Terminating Investigations of Criminal Acts in the Excise Sector for the Interest of State Revenue has been stipulated, to implement Article 10 paragraph (2) of Government Regulation No. 54 of 2023 concerning Terminating Investigations of Criminal Acts in the Excise Sector for the Interest of State Revenue. This PERJA is a technical implementing regulation made to implement Government Regulation No. 54 of 2023 concerning Terminating Investigations of Criminal Acts in the Excise Sector for the Interest of State Revenue. The PERJA has regulated very clearly, in detail and firmly regarding what criminal acts in the excise sector can be subject to case termination, the amount of fines that must be paid, at what stages they can be imposed, and the legal basis for the delegation of authority, as well as the mechanism for implementing the termination has been regulated.

In addition to the three economic crimes above, there are regulations in Government Regulation Number 37 of 2024 concerning Types and Tariffs for Types of Non-Tax State Revenue Applicable to the Attorney General's Office of the Republic of Indonesia, which in Article 1 Paragraph (1) letter q stipulates that the types of Non-Tax State Revenue (PNBP) include revenue from peace fines. This is regulated more clearly in the explanation of each article which states that:

"What is meant by a "peace settlement" is the termination of a case outside the court by paying a fine approved by the Attorney General. The use of a peace settlement in economic crimes is one form of application of the opportunity principle held by the Attorney General in tax crimes, customs crimes, or other economic crimes based on statutory regulations both at the investigation and prosecution stages by the Prosecutor's Office."

Based on the explanation of the article, a peace fine is a termination of a case imposed at the investigation and prosecution stage by the Prosecutor's Office with the payment of a fine approved by the Attorney General, and the proceeds of the payment can be categorized as Non-Tax State Revenue.

Then, in the latest Criminal Procedure Code (KUHAP), the settlement of settlements is one of its breakthrough reforms. Article 65 of the KUHAP regulates the authority of the Public Prosecutor, one of which is stipulated in letter i, namely to settle settlements. Further provisions regarding settlements are provided in Article 66, which states:

1. The peace fine as referred to in Article 65 letter I is a mechanism for terminating a case outside the court by paying a fine approved by the Attorney General in accordance with the provisions of laws and regulations.
2. Further provisions regarding the procedures for implementing peace fines are regulated in Government Regulations.

As for the explanation of Article by Article, Article 66 Paragraph (1) states that peace fines are used for economic crimes, including tax crimes, customs crimes or other

⁵East Java High Prosecutor's Office. "East Java High Prosecutor's Office and Tuban Prosecutor's Office Successfully Resolve Tax Criminal Case Through Payment of a Peaceful Fine of IDR 12 Billion", <https://kejati-jatim.go.id/kejati-jatim-dan-kejari-tuban-berhasil-selesaikan-perkara-pidana-perpajakan-melalui-pembayaran-denda-damai-sebesar-rp-12-miliar/>, Accessed on March 20, 2026, at 09.56 WITA.

⁶Rianda Prima Putri, *Economic Criminal Law*, Eureka Media Aksara, Purbalingga, 2023, p. 126.

⁷Bagman Roy Manalu, "Implementation of Restorative Justice in Customs and Excise Law Enforcement," *Indonesian Journal of Social Sciences*, Vol. 3, No. 5, May 2022, pp. 798-799.

economic crimes based on the Law.

A settlement fine is not a criminal offense, as it can only be imposed through a judge's decision following a criminal trial. Payment of a settlement fine results in the case being dismissed, so there is never a judge's decision to impose a penalty on the perpetrator. A settlement fine is also not an action. Actions are essentially aimed at protecting the public or improving the perpetrator and are generally imposed through court decisions. A settlement fine does not have a rehabilitative or corrective purpose like a legal action, but rather is oriented towards recovering state losses and streamlining case handling. A settlement fine is more accurately understood as a mechanism for terminating a case based on prosecutorial policy rather than as a type of criminal sanction or action. This is evident from the explanation of Government Regulation Number 37 of 2024, which explicitly links a settlement fine to the Attorney General's principle of opportunity. This means that the essence of a settlement fine is not the imposition of a sanction, but rather the decision to discontinue criminal proceedings for a specific purpose after the perpetrator fulfills the specified payment obligation.

The introduction of the new Criminal Procedure Code (KUHAP) has addressed the legal basis for implementing regulations for settlement fines. The new KUHAP stipulates the issuance of implementing regulations for settlement fines in the form of a Government Regulation. Unfortunately, this Government Regulation has not yet been formalized.

The current regulations regarding peace fines for all economic crimes in Indonesia are essentially limited to basic legal provisions without adequate regulations regarding the procedures for their implementation. The new Criminal Procedure Code only stipulates that the rules for their implementation are regulated by government regulations. However, regulations regarding the limits of a crime classified as an economic crime are not regulated, so the scope of economic crimes can be interpreted to include economic crimes in a broad sense. Furthermore, there are no regulations regarding the imposition of fines for each economic crime, and only a few economic crimes are regulated. Therefore, it is hoped that the government will immediately formulate implementing regulations that can apply to all economic crimes.

3.5. *Ius Constituendum* Peace Fines to Achieve It Principle Legal Certainty and Legal Justice, as well as Harmonization of Their Implementation

In a way constitutional based on Alenia fourth opening The 1945 Constitution of the Republic of Indonesia (UUD 1945) states that the state is obliged to realize justice social for all Indonesian people. Dimension This in a way specific give birth to understanding of the welfare state (*welfare state*). One of them characteristics the concept of the welfare state is

obligation government For involved active in life citizens (*staatsbemoeienis*) in order to strive for creation welfare general (*bestuurszorg*). However, in one side activity government in strive welfare general must be always based on the principles general good governance (AAUPB), in particular principle certainty law, namely principle in a state of law that prioritizes runway provision regulation legislation, propriety, consistency, and justice in every policy organization government^[8].

Gustav Radbruch put forward related ideals the law that must be its value must be walk side by side. Ideals the namely justice, certainty law, and benefit. Certainty law realized through regulation clear, logical and unambiguous legislation multiple interpretations, so that every individual can predict consequence law from his actions^[9]. Implementation fine peace as alternative criminalization Still need strict guidelines, starting from criteria things that can completed until the comparison with the judicial process conventional. All problem This show the need arrangement clearer so that handling action criminal economy by the Prosecutor's Office can walk effective, measurable, and provides certainty law^[10].

Action criminal economy is crucial issues in Indonesia, which include various form crime. As time progresses, changes occur pattern crime also follows him. In the middle change said, the legal status *quo* positive (*Ius Constitutum*) about fine peace Not yet capable reach various form action criminal economy others, because ambiguity of norms regarding procedures its implementation, so that fine peace For action criminal economy other Not yet Can implemented. Therefore, in this study, the researcher examines how criminal acts are resolved in Western European countries:

3.6. Belgium

Belgium use method alternative to trial criminal known conventional with *transaction penale*. *Transaction penale* is procedure alternative to trial criminal conventional, which allows termination definitive action criminal, with condition payment a sum of money by the suspect offenders, the amount of which determined by the prosecutor's office. *transaction penale* No involving confession guilty, but rather confession on error civil law by the party who benefits, who requires it For give change make a loss to the injured party^[11]. In a way normative, regulatory regarding procedures implementation mechanism the arranged in Article 216bis of the *Belgian Code d'Instruction Criminelle*, who gives authority to public prosecutor to offer settlement external matters court to suspect or defendant. Article 216bis of the *Belgian Code d'Instruction Criminelle* arrange authority for the Public Prosecutor to propose external settlement court on action criminal penalties with fine or criminal maximum imprisonment of two years if He evaluate that the demands made only in the form of fine or fines and confiscation, and things This valid provided loss has replaced make a loss completely^[12].

⁸Sadhu Bagas Suratno, "Formation Regulation Policy Based on the General Principles of Good Governance", *e-Journal Lentera Hukum Volume*, Vol. 4, Issue 3, 2017, p. 165.

⁹Revina Mutiara Indah & Irwan Triadi, "The Discovery of Law as a Implementation of Legal Theory in Answer" "The Emptiness of Norms", *Indonesian Legal Media (MHI)*, Vol. 3, No. 4, 2025, pp. 108-109.

¹⁰ Ryando W. Tuwaidan, Flora P. Kalalo & Natalia L. Lengkong, "Analysis Authority Prosecutor's Office In Handling Action Economic Crimes and the Implementation of Peace Fines as a Alternative Sentencing", *Al-Zayn: Journal Knowledge Social & Law*, Vol. 3, No. 6, 2025, p. 10734.

¹¹Giacometti, Mona & Teper, Léa, "La transaction penale revisitée à la sauce constitutionnelle et la médiation penale élargie." *Revue de droit penal et de criminology*, 98(7), 2018, p. 850. In Language original "La transaction penale est une procédure alternative au procès penalty classique, qui permet extinction définitive de l'action publique, moyennant le paiement, par l'auteur presumption d'une infraction, d'une somme d'argent dont le montant est déterminé par le ministère public. La transaction penale n'implique pas de reconnaissance de culpabilité mais bien la reconnaissance d'une faute civile dans le chef de son bénéficiaire, qui lui imposera d'indemniser la partie civile éventuelle."

¹²Ann Jacobs, "LE DROIT BELGE DANS LE CONCERT EUROPÉEN DE LA JUSTICE NÉGOCIÉE", *Revue Internationale de Droit Pénal*, 83(1), 2012, p. 75. In Language original "L'article 216bis du Code d'instruction criminelle prévoyait la faculté pour le ministère public de proposer une transaction pour les infractions punissables"

3.7. Dutch

In the Netherlands a termination prosecution with payment a known amount of money as *transaction* (*transactie*). *Transaction* (*transactie*) is one from the conditions stipulated, as intended in Article 74 of *Wetboek van Strafrecht* (Criminal Code (Dutch Criminal Code))^[13]. A *transaction* (*transactie*) is an out-of-court settlement under certain conditions. One such condition is paying compensation to the victim of the crime or a sum of money to the state, related to the value of the profits obtained. This payment is called a transaction, and in such cases, the right to bring the case to court is waived, provided the defendant meets the agreed-upon conditions. *Transactions* (*transactie*) are only possible for offenses and crimes that carry a maximum penalty of six years in prison^[14].

In this study, the author provides research results based on the results of a comparison of the two countries above, namely Belgium and the Netherlands regarding how the *Ius Constituendum* procedures for implementing peace fines. The use of peace fines in economic crimes is a regulation that is in the domain of procedural law that has 3 characteristics, namely it must be written (*lex certa*), clear (*lex scripta*), and not open to multiple interpretations (*lex stricta*), and pay attention to the principles of prosecution law related to the use of peace fines. In connection with this, the procedural law for the use of peace fines in economic crimes ideally regulates the following matters, 1) subject; 2) ojek; 3) delegation of authority; 4) stages; 5) method; and 6) conditions for the use of peace fines^[15].

It is hoped that in the formation of future Government Regulations, the regulation of peace fines can comprehensively cover the six aspects described above. Clear regulation of these aspects will be able to fulfill the principles of legal certainty and legal justice, because it provides clarity regarding the authorized subjects, the reasons for their application, and the implementation mechanism. In addition, the regulation of the procedures for implementing peace fines in a single Government Regulation that applies to all economic crimes will encourage the creation of harmonization in their application, thereby minimizing differences in interpretation and increasing consistency in law enforcement and can fulfill the legal ideals as stated by Gustav Radbruch, especially legal certainty and justice.

4. Closing

4.1. Conclusion

1. In system Indonesian law, existence fine peace has arranged in Article 35 paragraph (1) letter k of the Law Prosecutor's Office, Article 65 letter i, and Article 66 of the new Criminal Procedure Code, which regulates fine peace as mechanism termination external matters court. Currently, the mechanism similar has implemented in action criminal taxation (Article 44B of the Law Harmonization Regulation Taxation), customs (Article 113 of the Law Customs), and excise (Article 64 of the

Law Excise), as well as rule derivative However, these regulations remain incomplete because the mandate in Article 66 of the Criminal Procedure Code, which delegates its regulation to a Government Regulation, has not yet been established. Some economic crimes, such as taxation, customs, and excise, already regulate the termination of cases through the payment of fines, while other economic crimes do not have implementing regulations.

2. Article 216bis of the Belgian Criminal Procedure Code (KUHP) details the mechanism for *penal transactions* in its criminal procedure code. Similarly, in the Netherlands, it is regulated in detail in Article 74 of the Criminal Procedure Code (*Wetboek van Strafrecht*). Therefore, through the *Ius Constituendum approach*, a more comprehensive and structured regulation is needed regarding the procedures for implementing peace fines in Indonesia. These regulations must clearly cover the subject, object, authority, stages, methods, and conditions of use, so as to create harmonization in application across various economic crime sectors.

4.2. Suggestions

1. Required explanation more carry on about fine peace For action criminal economy this, in order to complete problem normative ambiguity and avoidance existence multiple interpretations in its implementation. The government need quick form Regulation Government as rule implementer fine peace and rule derivative technical the continuation that is Regulation Attorney General of the Republic of Indonesia.
2. In formation Regulation Government and Regulation The Attorney General's Office of the Republic of Indonesia, needs to formulated in a way comprehensive, not only limited to arrange formal procedures, but also includes aspects important like authority of each institution, mechanism submission and approval, classification action criminal economics, quantity and standards determination fines, as well as system supervision For prevent potential abuse. In addition, the regulation the should arranged in One integrated framework For all over action criminal economy, so that No happen difference mechanism between sectors that can cause uncertainty law.

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of one amends you of one pain d'emprisonnement jusqu'à cinq ans lorsqu'il estimait ne devoir requérir qu'une amende et une confiscation, et cela pour autant que le dommage ait été entièrement réparé".

^[13]In Article 1:1 Chapter 1 General Provisions of *Besluit tenuitvoerlegging strafrechtelijke beslissingen* (Stb. 2019, 505). In the original "Transactie: een of meer van de gestelde voorwaarden, bedoeld in artikel 74 van het Wetboek van Strafrecht".

^[14]Hans Nelen, "Hit them where it hurts most? The proceeds-of-crime approach in the Netherlands." *Crime, law and social change*, 41(5), 2004, p. 520. In the original "A case can be settled out of court under certain conditions (art. 74 Criminal Code). Such a condition may be that the defendant pays damages to the victim of his crime or a sum of money to the state, related to the value of the proceeds obtained. This payment is called a transaction and in such cases, the right to bring the case to court is annulled, provided that the agreed provisions are fulfilled. A transaction is only possible for offenses and crimes which carry a maximum penalty of six years imprisonment".

^[15]Indra Gunawan, *Op. Cit.*, pp. 81-84

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