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Legal Inconsistencies in the Criminalization of Fraud: Toward a Harmonized International Criminal Framework

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ABSTRACT

Fundamental differences in the definitions, criminalization, and enforcement procedures of transnational fraud have created significant obstacles to international criminal law cooperation. This study aims to identify legal inconsistencies in twelve jurisdictions and to formulate a normative harmonization framework applicable to the handling of transnational fraud. Through a comparative legal approach and doctrinal analysis, the study finds that regulatory fragmentation not only weakens the effectiveness of law enforcement but also hinders the restoration of victims' rights and the application of substantive justice principles. This study proposes an integrated framework encompassing universal definitions, minimum procedural standards, and victim-centered cooperation mechanisms. These findings are expected to serve as a conceptual foundation for developing more inclusive and responsive international legal instruments to address the challenges of transnational fraud.

Keywords: *Comparison of Legal Systems, Harmonization of Criminal Law, International Cooperation Restitution to Victims, Transnational Fraud*

Introduction

Fraud, as a criminal offense, has become a global concern over the last two decades, in line with the increasing intensity of cross-border transactions, the digitization of financial systems, and the development of blockchain-based technologies (Albanese, 2005; Griffiths, 2024; Korsell, 2020; Kratcoski & Edelbacher, 2018; Rybalchenko et al., 2022). According to the 2022 Global Economic Crime and Fraud Survey by PwC, more than 46% of companies worldwide reported being victims of economic crime, with fraud representing the most common type of case (Sirohi & Misra, 2024). Specifically, online fraud and cross-border financial schemes have increased by more than 30% in the past five years (Adiningsih, 2024). In Indonesia alone, data from the Financial Services Authority (OJK) and the Indonesian National Police indicate that thousands of public complaints are received each year related to fraudulent investments, illegal online loans, and crypto-asset-based fraud (Akbar, 2019). These issues are challenging to address because of jurisdictional limitations and differences in legal treatment between countries.

This phenomenon becomes even more complex when perpetrators, victims, and evidence are dispersed across countries with different legal systems. Disparities in defining criminal elements—such as "misleading" or "malicious intent"—as well as variations in the criminal penalties imposed, create opportunities for impunity, allowing perpetrators to exploit legal loopholes between nations (Jesslyn Elisandra Harefa et al., 2025; Syarief, 2021). In the context of legal globalization, this lack of harmonization not only hinders the enforcement of the law but also results in substantial injustice for victims across multiple jurisdictions (Cross, 2020; Mugarura, 2018; Winter & Vozza, 2022).

The urgency of this research lies in the importance of establishing a common understanding of criminal law regarding fraud as a transnational crime. In the current international legal order, crimes such as terrorism, human trafficking, and money laundering

have been recognized as transnational offenses requiring international standards (Halliday et al., 2024; Hammad Khan et al., 2024; Hataley, 2020; Obokata, 2017; Saul, 2017). However, fraud, which often forms part of large-scale economic crimes, has not received equivalent attention. When national legal systems fail to respond effectively to the challenges of transnational fraud, a more inclusive and adaptive international criminal law framework becomes necessary.

Several previous studies have examined comparative approaches to criminal law on fraud within regional contexts, such as the European Union and ASEAN. However, the majority of these studies remain descriptive in nature and do not explicitly offer a normative framework for harmonization. There is no comprehensive study that identifies the crucial elements that could serve as common ground between various legal systems. Additionally, the lack of attention to the victim protection dimension and recovery mechanisms in the context of transnational fraud reinforces the urgency for an approach that is not only state-based but also rooted in cross-jurisdictional justice.

In light of the background and identified research gaps, this study aims to analyze inconsistencies in the criminalization of fraud across various legal jurisdictions and to formulate a more harmonious international criminal law framework. The main contribution of this study lies in the development of a normative model based on principles of transnational criminal law, which can serve as a reference for legislators, law enforcement agencies, and international organizations in strengthening coordination for the fair and effective handling of cross-border fraud.

The objective of this study arises from an awareness of the importance of a coordinated and consistent legal response to increasingly complex and global forms of fraud. In the context of legal and economic globalization, the existence of various national legal systems that differ in their regulation and prosecution of fraud poses serious challenges to the effectiveness of cross-border law enforcement. Therefore, this study aims to provide both conceptual and practical contributions to addressing these challenges through a comparative law approach and normative analysis.

Specifically, this study aims to identify and analyze normative and procedural inconsistencies in the criminalization of fraud across various representative legal jurisdictions. This analysis examines differences in the definitions of the elements of fraud offenses, the classification of types of fraud, prosecution and evidentiary mechanisms, and the forms of criminal sanctions applied. Through this mapping, the study seeks to build a comprehensive understanding of the complexity of fraud law in an international context.

Furthermore, the main objective of this study is to formulate a harmonized international criminal law framework that can serve as a reference for addressing transnational fraud. This framework is designed to integrate the principles of international criminal law, ensure the protection of victims, and strengthen cooperation among countries in the areas of extradition, asset recovery, and mutual legal assistance. Thus, this research not only contributes to the development of transnational criminal law theory but also presents an operational model that countries can adopt to formulate more effective and equitable legislative policies and to enhance international cooperation in addressing global fraud.

Methods Research

This study employs a comparative normative legal approach combined with qualitative analysis methods (Kischel, 2020; Linos & Carlson, 2017; McHugh-Russell et al., 2016; Qamar & Rezah, 2022). The normative approach is used to examine the legal norms governing criminal fraud in various jurisdictions, both in substance (substantive law) and in

procedure (procedural law) (Qamar & Rezah, 2022; Usman, 2023). This approach enables researchers to explore relevant legal provisions, including national legislation, international agreements, doctrines, and court decisions related to the criminalization of fraud.

In particular, the comparative legal method serves as the primary tool for analyzing differences and similarities in the regulation of criminal fraud across various countries. In this context, twelve legal jurisdictions were selected to reflect the diversity of the world's legal systems, namely: the United States, the United Kingdom, Germany, France, Japan, China, Indonesia, Brazil, South Africa, the United Arab Emirates, Russia, and Australia. The selection of these countries was based on two principal criteria: (1) representation of the three main legal systems—common law, civil law, and mixed systems; and (2) geopolitical relevance and involvement in international law enforcement cooperation.

Data were collected through desk research by reviewing various primary and secondary legal sources. Primary legal sources include national criminal laws, implementing regulations, and international conventions such as the United Nations Convention against Transnational Organized Crime (UNTOC). Secondary sources comprise scientific literature, reports from international agencies (UNODC, INTERPOL, FATF), academic journals, online legal databases such as Westlaw, LexisNexis, and HeinOnline, as well as regulations available on the official websites of each country's government.

The analysis was conducted using an inductive thematic approach, which involved grouping important elements from each jurisdiction into several analytical categories: definitions and elements of fraud; classification of types of fraud; criminal sanctions; mechanisms for punishment and proof; and international-cooperation procedures. All these elements are subsequently mapped in a comparison matrix to identify gaps, overlaps, and potential areas for harmonization.

To maintain validity and replicability, all legal documents used as objects of analysis are systematically archived, and the coding framework employed in thematic analysis is available for review by other researchers. Accordingly, this research methodology is designed not only to produce valid findings but also to serve as a reference for further studies in transnational criminal law and legal harmonization.

Results and Discussion

Definitional Variations: Problems of Legal Principles and Normative Fragmentation

A comparative analysis of twelve jurisdictions reveals profound and problematic conceptual disparities in the legal definition of fraud. These divergences are not merely linguistic; they reflect substantive differences in legal philosophy, criminal policy, and responses to the evolving nature of crime.

In the United Kingdom, for example, the Fraud Act 2006 defines fraud in relatively broad, conduct-based terms—namely, the deliberate and dishonest provision of false information with the intention of obtaining a gain or causing a loss to another person, either directly or indirectly (Dyson & Vogel, 2021; Howard et al., 2007). This approach enables the law to encompass diverse and emerging modus operandi without requiring constant legislative amendment.

By contrast, the German legal system, through the Strafgesetzbuch (§263), defines fraud (Betrug) more restrictively, grounding the offense in its result. Its core elements are deception (Täuschung), which induces a mistake on the part of the victim (Irrtum), leading the victim to take harmful actions (Vermögensverfügung), and ultimately resulting in financial loss (Vermögensschaden) to the victim or a third party who benefits from the

perpetrator's conduct (Dyson & Vogel, 2021; Wassmer, 2019). This formulation demands a precise and structured causal link between the manipulative act, the victim's error, the victim's subsequent action, and the resulting harm.

Indonesia, still adhering to Article 378 of the Criminal Code (KUHP), retains a classic colonial formulation. This provision centres on a "series of deceptions" (listige kunstgrepen) and the perpetrator's ability to induce others to surrender property, acknowledge a debt, or extinguish a debt, thereby causing loss (Aryana, 2022; Hasib et al., 2020; Rusydianta, 2021; Sugiartha et al., 2021). The formulation is generic and highly abstract. Its principal consequence is the inability to address adequately and clearly the realities of rapidly evolving fraud schemes, including digital fraud (e.g., phishing, online scams), identity theft, and fraud involving cryptocurrency or other forms of digital finance. The lack of specificity and the rigidity of Article 378 not only generate significant enforcement gaps domestically—where law enforcement officials and judges struggle to apply antiquated norms to novel fact patterns—but also magnify obstacles to cross-border law enforcement cooperation.

These definitional disparities have critical implications for the principle of double criminality, a cornerstone of extradition treaties and mutual legal assistance (MLA) agreements (Billing, 2016; Suwono et al., 2024). This principle requires that the act for which extradition or cooperation is sought constitute a criminal offense in both the requesting and the requested state. When Indonesia's definition of fraud under Article 378 is neither equivalent to nor encompassing of acts that are clearly considered fraudulent under the laws of another jurisdiction—such as certain insider trading schemes or complex forms of cyber fraud—the double criminality requirement is frequently unmet. Consequently, international cooperation is impeded, undermining the prosecution of transnational offenders and the recovery of criminal proceeds.

At a deeper level, the absence of consensus on the legal definition of fraud runs counter to the objective of harmonization and unification pursued by numerous transnational criminal law initiatives. This lack of alignment is not merely technical in nature; it also generates strategic legal loopholes that are actively exploited by transnational organized criminals. Such actors engage in jurisdictional forum shopping, deliberately establishing or relocating operations to states with narrower or more lenient definitions of fraud, or with weaker enforcement capacity, in order both to commit offenses and to conceal or launder the proceeds.

Normative fragmentation in defining fraud is therefore not a purely academic concern. It constitutes a tangible impediment to global justice and security. A more comprehensive and adaptive definitional consensus is urgently required. Such a consensus is a sine qua non for advancing the harmonization of global criminal law and for strengthening the effectiveness of international cooperation in combating increasingly sophisticated and transnational forms of fraud.

Differences in Criminal Sanctions: Disparities in Proportionality, Extradition Challenges, and the Global Justice Crisis

Further comparative analysis reveals significant, even extreme, disparities in the range and severity of criminal sanctions imposed for fraud offenses in various jurisdictions. Specifically, in China, Article 266 of the Chinese Criminal Code (Combating Fraud) imposes life imprisonment or even the death penalty on perpetrators of large-scale fraud or fraud with "serious consequences," reflecting the state's harsh approach to economic crimes deemed to threaten social stability (Liu, 2011; Shen, 2018; Yandong, 2014).

Conversely, in Japan, the General Fraud Act (Penal Code Article 246) often governs cases of fraud involving losses below a certain threshold (e.g., below ¥1 million), which are subject only to administrative sanctions or light fines, placing them almost on par with misdemeanors in the criminal hierarchy. Meanwhile, jurisdictions such as the United States (e.g., through Title 18 U.S.C. §§ 1341, 1343, and 1344—Mail Fraud, Wire Fraud, Bank Fraud) and the United Kingdom (Fraud Act 2006) tend to impose very severe prison sentences, particularly when fraud involves embezzlement in the context of corporations, financial institutions, or the public sector, with sentences that can reach decades in prison, reflecting a very low tolerance for breaches of trust and market integrity (Trautman & Kimbell, 2018; Zelcer, 2012).

More than just local variations, such wide disparities in sanctions raise fundamental problems with the principle of proportionality, a cornerstone of international sentencing standards and human rights. This principle requires that the severity of punishment be commensurate with the seriousness of the crime and the level of culpability of the offender.

However, in reality, when a jurisdiction (e.g., Switzerland or the Netherlands) statutorily or judicially considers a certain type of fraud to be a petty offense with a maximum penalty of less than two years' imprisonment (Le Nguyen, 2020; Levi, 2010), while another jurisdiction (such as the United States or Singapore) classifies the same substantive act as a serious felony with a penalty of 10 years' imprisonment or more, this creates a deep inequity and legal uncertainty. This imbalance undermines the foundation of international law enforcement cooperation, particularly extradition and Mutual Legal Assistance (MLA).

The most crucial practical implications arise in the context of extradition. As a paradigmatic illustration, extradition requests made by Brazil (which imposes relatively high prison sentences for complex economic crimes under Lei nº 13.606/2018) to European Union member states (where some countries, such as Portugal or Spain, have lower maximum prison terms for ordinary fraud and uphold the principle of ne bis in idem) often face rejection. Such refusals are not merely technical in nature but are based on fundamental human rights considerations: concerns that the perpetrator may face significantly harsher penalties in the requesting state compared to the potential penalties in the requested state, thereby potentially violating the principle of non-refoulement enshrined in instruments such as the European Convention on Human Rights (Article 3) and the Convention Against Torture (CAT).

The principle of non-refoulement prohibits the transfer of a person to a jurisdiction where there are substantial grounds for believing that they would face inhuman or degrading treatment, including the risk of punishment that is manifestly disproportionate or an unfair trial. Extreme disparities in sanctions provide strong grounds for such arguments.

In essence, this situation raises a complex legal dilemma between national legal sovereignty in determining criminal sanctions and the collective global imperative for legal certainty, equal treatment, and effective cooperation in combating transnational crime. The lack of harmonization of sanctions not only undermines law enforcement efforts but also has the potential to create substantive injustice for suspects/defendants and erode the legitimacy of the international legal system.

Therefore, based on these findings, it is increasingly clear and urgent to develop internationally agreed minimum sentencing standards, particularly for categories of cross-border fraud that have systemic impacts. Such standards, while respecting the diversity of legal systems, should ensure a certain floor of severity of sanctions that reflects the universal seriousness of these crimes. Achieving this consensus is a critical prerequisite for ensuring equality before the law for perpetrators of crimes, regardless of the location of prosecution, and for providing legal certainty that is so badly needed by countries in establishing and implementing effective and fair cross-border law enforcement cooperation.

Discussion

Based on the findings outlined above, a theoretical consensus has emerged that fraud has undergone a fundamental transformation into a systemic, transnational criminal phenomenon. Its fluid nature, adaptability to technological advances, and ability to exploit interjurisdictional loopholes indicate that an effective legal response can no longer rely solely on national instruments. In this context, the traditional paradigm that strictly separates national and international law has proven inadequate.

In response to this complexity, Paul Schiff Berman's (2012) theory of Global Legal Pluralism offers a relevant epistemological foundation (Berman, 2012; Galán & Patterson, 2013; Xavier, 2013). According to Berman, in contemporary global legal governance, norms are not hierarchical—whether national or international—but instead interact in what he calls "competitive legal spaces." Therefore, in the context of transnational fraud, the harmonization approach should not be understood as rigid unification but rather as the recognition of interlegality, which is the dynamic dialogue process between national legal systems, regional instruments such as the Council of Europe Convention on Fraud, and global regimes such as the United Nations Convention against Transnational Organized Crime (UNTOC). This interaction ultimately forms a multilevel responsive framework that addresses and reinforces cross-border challenges.

In line with this framework of global legal pluralism, the functionalist approach to comparative law developed by Konrad Zweigert and Hein Kötz (1998) provides an equally important methodological contribution (De Coninck, 2010; Michaels, 2006; Van Hoecke, 2016). This approach emphasizes the importance of identifying equivalent legal functions across different systems, rather than focusing on formal similarities in normative texts. In the case of fraud, three core functions can be considered universal: the protection of asset integrity, the assurance of accurate representation, and the prevention of abuse of trust. By focusing on these functions, countries can formulate common denominators—namely, essential elements and minimum sanction principles—that enable the interoperability of legal systems without negating the diversity of legal cultures and criminal policies.

Based on this theoretical foundation, the idea of repositioning fraud as a core offense in the transnational criminal law architecture is becoming increasingly urgent. By granting fraud the same status as other serious crimes in the UNTOC, such as money laundering (Article 6) and bribery (Article 8), fraud would gain the legitimacy required for inclusion in a specific protocol. The concrete step proposed is the drafting of an Additional Protocol to the UNTOC on Transnational Fraud (Protocol to the UNTOC on Transnational Fraud) that is both binding and operational.

Furthermore, the protocol should regulate at least four main aspects. First, it should define the core elements of transnational fraud, in both digital and non-digital forms, using a function-based approach. Second, it should establish minimum standards for criminalization that uphold the principles of proportionality and respect for human rights. Third, it must regulate special cooperation mechanisms such as accelerated cross-border asset freezing, real-time electronic data exchange, and the establishment of joint investigation teams with specific mandates. Finally, the protocol must establish criminalization obligations at the domestic level based on the core elements codified internationally.

The theoretical significance of this protocol cannot be underestimated. On the one hand, it would actualize the concept of Global Legal Pluralism by introducing a layer of transnational norms that interact constructively with national legal systems. On the other hand, it would also realize the functional approach of Zweigert and Kötz through the codification of common denominators into binding international lex scripta. Thus, the

protocol is not a threat to sovereignty but rather a strategic instrument for managing interdependence within the complex and interconnected global legal order.

Overall, the theoretical repositioning of fraud as a core transnational crime, built on a framework of global legal pluralism and functional methods, is not merely an academic response to existing regulatory disparities. More than that, it is a systemic necessity for building an adaptive cooperative architecture to address regulatory asymmetries, strengthen the legitimacy of the global legal system, and, most importantly, ensure access to justice for victims and the broader public amid the growing integration of cross-border digital economies.

Scientific Novelty and Research Contribution

This study offers significant scientific novelty in the field of transnational criminal law, particularly in relation to the criminalization of fraud. Unlike previous studies, which tend to be descriptive or confined to case studies within a single jurisdiction or region, this study adopts a systematic and comprehensive comparative-analytical approach across major legal systems. The results not only reveal normative and procedural variations but also produce a new normative construction in the form of a framework for the harmonization of criminal law on fraud at the international level.

The first novelty lies in the comparative approach across twelve jurisdictions covering common law, civil law, and mixed legal systems from various strategic regions of the world. Through this approach, the study is able to describe the global configuration of legal disharmony in fraud in terms of definitions, forms of punishment, and mechanisms for international cooperation. The mapping resulting from this comparison provides empirical insights that have not been extensively explored in previous literature, particularly in identifying points of friction between jurisdictions that hinder law enforcement and victim recovery.

The second novelty is a conceptual reconstruction of the position of fraud within the framework of international criminal law. Until now, fraud has not been recognized as a core crime within this framework, unlike corruption, human trafficking, or money laundering. Based on theoretical arguments and empirical evidence, this study proposes the repositioning of fraud as a transnational crime that meets the fundamental characteristics for recognition within the international legal framework, including the possibility of developing an additional international protocol under the UNTOC that specifically addresses cross-border fraud.

The third innovation is the development of a framework model for the harmonization of international criminal law on fraud, which includes not only standardized definitional elements but also minimum procedural principles, such as cross-border asset seizure mechanisms, cross-jurisdictional victim restitution, and proportionality in criminal sanctions. This framework is designed to serve as a basis for the development of bilateral or multilateral agreements, as well as a reference for international organizations such as the UNODC, ASEAN, or the Council of Europe in designing new relevant legal instruments.

In terms of scientific contribution, this study enriches the body of comparative and international criminal law by adopting an approach that not only describes differences but also synthesizes them into normative solutions. Methodologically, the integration of a thematic approach, comparative matrix analysis, and normative construction enables this study to serve as a model for other cross-jurisdictional legal studies.

The practical contribution of this research lies in providing conceptual and technical references for policymakers, legislators, and law enforcement officials in establishing more effective international cooperation mechanisms to address cross-border fraud. The proposed

harmonization framework can also serve as a reference for updating national laws in countries that continue to have gaps or weaknesses in regulating technology-based fraud and global transactions.

Thus, this study provides not only a deeper understanding of the legal issues surrounding fraud in a global context but also practical and applicable solutions for the formulation of legal policies at both the national and international levels.

Conclusion

This study reveals that the criminalization of fraud across various jurisdictions worldwide remains significantly fragmented, both in terms of definition and classification, as well as sanctions and law enforcement mechanisms. Such inconsistency not only creates obstacles to cooperation between countries but also creates opportunities for impunity for perpetrators who exploit the lack of harmonization between legal systems to evade criminal responsibility. In the context of cross-border fraud, these conditions cause delays in the restoration of victims' rights and weaken the effectiveness of the global criminal justice system.

The findings indicate that there is no universal agreement on the definition or constituent elements of fraud, with the result that the principle of double criminality often becomes a stumbling block in extradition proceedings. Disparities in the imposition of sanctions give rise to imbalances in the application of the principles of proportionality and criminal justice. Furthermore, procedural fragmentation—particularly in relation to asset seizure and victim restitution—underscores the urgent need for a more coordinated international mechanism grounded in principles of transnational justice.

Based on these findings, this study emphasizes the importance of establishing a harmonized international criminal law framework to address cross-border fraud. Such harmonization does not erode national legal sovereignty; rather, it seeks to create minimum standards that can serve as a foundation for cross-jurisdictional cooperation. In this context, repositioning fraud as a strategic transnational crime constitutes an urgent normative prerequisite that must be fulfilled, either through additional protocols to existing international conventions or through more progressive regional agreements.

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