



Research Paper

## Tax Law Enforcement in Efforts to Recover State Revenue Losses

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**Abstrak:** Taxes are a source of income for a country, so they are very important for a country's performance and development transition. In Indonesia, the taxes imposed on the public are regulated in a law known as the tax law. If the tax laws in force in Indonesia are not implemented responsibly, it will result in sanctions in the form of tax fines. One of the cases of tax crimes that occurred was in the Bandung High Court Decision Number 4147 K/Pid.Sus/2019 where the defendant JK submitted a Tax Return (SPT) whose contents were incorrect, causing harm to state revenues. The research objectives that will be obtained next include to find out the form of law enforcement against tax crimes and to find out the judge's decision based on the Bandung High Court Decision Number 4147 K/Pid.Sus/2019. This research is a type of normative research. The approach chosen by the author is the statutory approach and the case approach. The types and sources of data or legal materials used are primary law and secondary law. The procedure for collecting legal materials used is library research. Data analysis which is an analysis of legal materials uses descriptive-normative analysis techniques. Based on the research results, it can be concluded that enforcement of tax criminal law in Indonesia is not in accordance with the principle of *ultimum remedium*; and the judge's decision based on Supreme Court Decision Number 4147 K/Pid.Sus/2019 is in accordance with the *Ultimum Remedium* principle, so that efforts to recover state revenue losses are optimally successful. However, judges' decisions still experience disparities in the tax law enforcement process. Efforts to recover losses from state revenues in order to realize social justice and general welfare, which are the duties and responsibilities of the state, therefore prosecution and criminal responsibility for tax crimes committed by taxpayers must be integrative, namely in addition to law enforcement. repressive), for prevention (preventive), and must also be accompanied by efforts to recover losses in state revenues (restorative). The penalties imposed on perpetrators of tax crimes are fines and/or additional penalties in the form of other acts or what is better known as the double track system formula.

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### I. INTRODUCTION

The purpose of tax law in particular is to realize justice, while the purpose of tax law in general is to realize justice in tax collection by the state and society as taxpayers. Taxes paid by taxpayers contribute to state revenue and have implications for the expansion of state development [1]. The most important benefit of taxes is for national development, such as land and building taxes due to occupying land or territory of the country, used to finance capital expenditures such as expenditure for personnel, goods and building public facilities, as well as transfers to the regions. regions for sustainable development in the region [2].

In Indonesia, the taxes imposed on the public are regulated in a law known as the tax law. Taxes are a people's mandate which must be managed by the government effectively and efficiently in producing national development, where the success of this development will be felt directly by the people so that taxes obtained from the people must be managed optimally so that people's trust in the government is maintained. Tax criminal provisions along with the use of criminal sanctions in administrative law include the KUP Law (UU No. 6 of 1983, amended by Law No. 9 of 1994, amended by Law No. 16 of 2000, amended by Law No. 28 of 2007, with

the latest amendment to the Law No. 16 of 2009) which is used by the Panel of Judges to sentence perpetrators of tax crimes in the General Court, there is only a principal crime (Article 38-41B) [3]

Pid.Sus/2019 where the defendant JK submitted a Tax Return (SPT) whose contents were incorrect, thereby causing loss to state revenues. Defendant JK reported an incorrect SPT to apply for a tax refund or compensation. Apart from that, the defendant JK also assisted, issued and used tax invoices, proof of collection or proof of tax deductions that were not based on actual transactions so that the defendant was declared guilty based on Article 39 Paragraph (1) letter d in conjunction with Article 43 Paragraph (1) of the Law. Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law Number 16 of 2009 in conjunction with Article 64 Paragraph (1) of the Criminal Code as the First Indictment and Article 39 Paragraph (3) in conjunction with Article 43 Paragraph (1) of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law Number 16 of 2009 in conjunction with Article 64 Paragraph (1) of the Criminal Code as in the Second Indictment and 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation as amended several times, most recently by Law Number 16 of 2009 in conjunction with Article 64 Paragraph (1) of the Criminal Code as in the Third Indictment. For the tax crime committed by the defendant JK, the defendant was sentenced to prison for 3 (three) years and a fine of 2 (two) X (times) Rp. 3,800,451,644.00 (three billion eight hundred million four hundred fifty-one thousand six hundred and forty-four rupiah) + (plus) Rp. 35,095,343,691.00 (thirty-five billion ninety-five million three hundred and forty-three thousand six hundred and ninety one rupiah) + (add) IDR 34,926,641. 649.00 (thirty four billion nine hundred twenty six million six hundred forty one thousand six hundred and forty nine rupiah) = (equal to) Rp. 147,644,873,968.00 (one hundred forty seven billion six hundred forty four million eight hundred seventy three thousand nine hundred sixty eight rupiah) and if the Defendant does not pay no later than 1 (one) month after the Court Decision has permanent legal force, then his assets can be confiscated by the Prosecutor's Office and then auctioned off to pay the fine [4]

Research on tax crimes conducted by Ruben Achmad stated that the subjects of tax crimes are humans and legal entities (legal entities). Tax criminal liability committed by humans is based on culpability (mistake). For legal entities as perpetrators of tax crimes, the principle of tax liability is based on the theory of identification, vicarious liability and strict liability. Criminal sanctions against perpetrators of tax crimes only involve imprisonment and imprisonment. To maintain state revenues, the formulation of fines against perpetrators of tax crimes by taxpayers is the main sanction (premm remedium), while imprisonment is formulated as the ultimum remedium sanction (ultimate weapon). [4] . Other research conducted by Nendy Damayanti, Puspita Adhy Surya Ningsih, and Andi Ersandhi Ramadhan explains that although the Tax Invoice or certain letters whose position is equivalent to a Tax Invoice have met the formal requirements and the Value Added Tax has been paid, if the information contained in The Tax Invoice or certain documents whose position is equivalent to a Tax Invoice do not correspond to the actual facts regarding the delivery of Taxable Goods and the delivery of Taxable Services, then the Tax Invoice or certain documents whose position is equivalent to a Tax Invoice do not fulfill the material requirements or are invalid. To safeguard state revenues, the formulation of fines for perpetrators of tax crimes is the main witness (premm remedium), while imprisonment is formulated as a sanction that is ultimum remedium (ultimate weapon). Therefore, based on these two studies, further research will be carried out regarding tax crimes contained in the Bandung High Court Decision Number 4147 K/Pid.Sus/2019 to analyze whether the form of law enforcement and the judge's decision given to defendant JK is in accordance with the law. invite. The applicable law is in accordance with tax law through the research title "Analysis of Tax Criminal Law Enforcement in the Bandung High Court Decision Number 4147 K/Pid.Sus/2019". The research objectives that will be obtained next include: (1) To determine the form of law enforcement against tax crimes. (2) To find out the judge's decision based on Bandung High Court Decision Number 4147 K/Pid.Sus/2019.

## **II. LITERATURE REVIEW**

### **Taxation**

Taxes are mandatory contributions given to the people to be deposited into the state treasury based on law and can be imposed without receiving direct reciprocity but can be designated and proven to finance general expenditure in the public sector. Taxes have a very important role in life, especially in state development, because taxes are needed as a source of income to finance various state expenditures for the public interest, as well as to support the implementation of development.

## **Tax Crimes**

Tax crimes are violations of statutory regulations in the field of taxation that give rise to controversy, especially regarding violations of tax law along with administrative criminal sanctions determined in accordance with general criminal law or special criminal law relating to taxation. [2] .

### **Bandung High Court Decision Number 4147 K/Pid.Sus/2019**

PT. T is a production company that sells locally and does not have an export license. In accordance with the testimony of the IR Witness (tax division) PT. T throughout 2016 did not make export sales. Then the defendant JK as Director of PT. KSU also did not have an export permit but acted as an export agent where defendant JK sought fictitious export documents for the benefit of PT. T with LS forwarder from PT. SK, while the goods exported by defendant JK were not produced by PT. Witness Ir (tax department) PT. T knew that defendant JK issued an export invoice which was assisted by L and signed by the Director of PT. T, while the Goods Export Notification was carried out directly by the Customs Services Company (PPJK) based on the invoice and packing list made by the defendant JK. However, the flow of funds that should go to PT. T was withdrawn into defendant JK's personal account as a ruse to show PT's export business activities. Q. Next is the reporting of PT Periodic VAT SPT. T to KPP Pratama Bandung in January 2016 to December 2016 by showing fictitious export sales documents sent by defendant JK. The defendant JK committed a tax crime because he submitted a Tax Return (SPT) whose contents were incorrect, thereby causing loss to state revenues. Defendant JK reported an incorrect SPT to apply for a tax refund or compensation. Apart from that, the defendant JK also assisted, issued and used tax invoices, proof of collection or proof of tax deductions that were not based on actual transactions so that the defendant was declared guilty based on Article 39 Paragraph (1) letter d in conjunction with Article 43 Paragraph (1) of the Law. Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law Number 16 of 2009 in conjunction with Article 64 Paragraph (1) of the Criminal Code as the First Indictment and Article 39 Paragraph (3) in conjunction with Article 43 Paragraph (1) of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures as has been amended several times, most recently by Law Number 16 of 2009 in conjunction with Article 64 Paragraph (1) of the Criminal Code as Second Indictment and 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation as amended several times, most recently by Law Number 16 of 2009 in conjunction with Article 64 Paragraph (1) of the Criminal Code as in the Third Indictment [5]

For the tax crime committed by defendant JK, the defendant was sentenced to 11 sentences: (a) Imprisonment for 3 (three) years and a fine of 2 (two) X (times) Rp. 3,800,451,644.00 (three billion eight hundred million four hundred fifty-one thousand six hundred and forty-four rupiah) + (plus) Rp. 35,095,343,691.00 (thirty-five billion ninety-five million three hundred and forty-three thousand six hundred ninety-one rupiah) + (plus) IDR 34,926,641,649.00 ( thirty-four billion nine hundred twenty-six million six hundred forty-one thousand six hundred and forty-nine rupiah) = (equal to) IDR 147,644. 873,968.00 (one hundred forty-seven billion six hundred forty-four million eight hundred seventy-three thousand nine hundred and sixty-eight rupiah) and if the Defendant does not pay no later than 1 (one) month after the Court Decision obtains permanent legal force, then His property can be confiscated by the Public Prosecutor and then auctioned off to pay the fine. (b) Burden the Defendant to pay court costs at the cassation level of Rp. 2,500.00 (two thousand five hundred rupiah).

## **Tax Law Theory**

The Tax Law is a set of regulations relating to taxation which are used to regulate the legal relationship between the state as tax collector and the public as taxpayers. [6]

## **Systematic Tax Theory**

Systematic taxation is the division of tax law based on applicable norms and regulations, which is divided into two parts, namely material law and formal tax law.

### **III. RESEARCH METHODS**

This research has a qualitative research design because it explains the problems contained in the Bandung High Court Decision Number 4147 K/Pid.Sus/2019 which is then discussed in depth to explain the form of law enforcement for tax crimes, then analyzed and linked to legislation regarding tax regulations which applies in Indonesia. This research is a type of normative research, with the approach chosen by the author being the statutory approach and the case approach. Types and sources of primary and secondary legal data or

materials. The procedure for collecting legal materials used is library research. Next, data analysis which is an analysis of legal materials uses descriptive-normative analysis techniques.

#### **IV. RESULTS AND DISCUSSION**

##### **Tax Criminal Law Enforcement**

##### **Tax Violators**

Indonesia is a country of law (*rechtstaat*) and not a country based on mere power (*machstaat*). This is confirmed in Article 1 paragraph (3) of the Third Amendment to the 1945 Constitution of the Republic of Indonesia. One of the reasons the state collects taxes is because of several functions that the state has, one of which is the allocation function. Tax revenues are used to produce goods that will be used by society. Taxpayers are tax subjects (persons or entities) who have fulfilled subjective requirements and at the same time fulfilled objective requirements [9].

The subjective requirements for a legal subject to become a tax subject are as follows: (1) An individual who resides or is domiciled in Indonesia. (2) Foreigners who have resided in Indonesia for 183 days or more within a period of 1 year (12) months or intend to settle/stay in Indonesia and have received approval from the competent authority. (3) Entities domiciled and/or established in Indonesia. (4) A foreign entity that is established and domiciled abroad but has branches, representatives, offices, business activities or other sources of income in Indonesia as a permanent establishment or permanent establishment (BUT), as a foreign entity in Indonesia.

The objective requirement for a tax subject to become a taxpayer is to have a tax object in Indonesia in the form of: (1) Land assets, lands and buildings for PBB and BPHTB objects. (2) Income received or obtained from Indonesia or from outside Indonesia as an object of income tax (PPH). (3) There is delivery of Taxable Goods (BKP) and/or Taxable Services (JKP) carried out within the Indonesian customs area or carrying out export-import activities of taxable goods and services, as well as utilizing intangible BKP within the customs area of origin. from outside the Indonesian customs area, as objects of Value Added Tax (VAT) and Sales Tax on Luxury Goods (PPnBM) as well as Import Duty and Excise..

The tax collection system in Indonesia is self-assessment, where taxpayers are given full trust based on Law Number 6 of 1983 concerning General Provisions and Tax Procedures (KUP) which has been amended by Law Number 16 of 2009 and Law Number 11 2020 concerning Job Creation, to carry out obligations as a Taxpayer. In practice, both individual taxpayers and corporate taxpayers will always try to save on tax payments. These efforts are usually carried out by means of tax planning, tax avoidance and tax evasion.

The signs used to determine whether tax management is legal (tax avoidance) or invalid (tax evasion), namely violating the provisions of tax crimes are regulated in articles 38, 39 and 39A of the KUP Law. One of the taxpayers in the form of a company that committed criminal acts in the field of taxation is PT Trubustex. PT. T is a production company that sells locally and does not have an export license. In accordance with the testimony of the IR Witness (tax division) PT. T throughout 2016 did not make export sales. Then the defendant JK as Director of PT. KSU also did not have an export permit but acted as an export agent where defendant JK sought fictitious export documents for the benefit of PT. T with LS forwarder from PT. SK, while the goods exported by defendant JK were not produced by PT. T

Witness Ir (tax department) PT. T knew that defendant JK issued an export invoice which was assisted by L and signed by the Director of PT. T, while the Goods Export Notification was carried out directly by the Customs Services Company (PPJK) based on the invoice and packing list made by the defendant JK. However, the flow of funds that should go to PT. T was withdrawn into defendant JK's personal account as a ruse to show PT. T export business activities.

Next is the reporting of PT's period VAT SPT. T to KPP Pratama Bandung in January 2016 to December 2016 by showing fictitious export sales documents sent by defendant JK. The defendant JK committed a tax crime because he submitted a Tax Return (SPT) whose contents were incorrect, thereby causing loss to state revenues. Defendant JK reported an incorrect SPT to apply for a tax refund or compensation.

Apart from that, the defendant JK also assisted, issued and used tax invoices, proof of collection or proof of tax deductions that were not based on actual transactions so that the defendant was declared guilty based on Article 39 Paragraph (1) letter d in conjunction with Article 43 Paragraph (1) of the Law. Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law Number 16 of 2009 in conjunction with Article 64 Paragraph (1) of the Criminal Code as the First Indictment and Article 39 Paragraph (3) in conjunction with Article 43 Paragraph (1) of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures as has been amended several times, most recently by Law Number 16 of 2009 in conjunction with Article 64 Paragraph (1) of the Criminal Code as Second



Indictment and 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation as amended several times, most recently by Law Number 16 2009 in conjunction with Article 64 Paragraph (1) of the Criminal Code as in the Third Indictment.<sup>17</sup>

### **Criminal Sanctions for Tax Crimes**

The provisions in Article 43 paragraph (1) of the KUP Law regulate that apart from being carried out by the Taxpayer (plagen or dader), tax crimes can also involve participants (delderding), such as representatives, legal representatives or employees of the Taxpayer or other parties. those who order (doen plagen or middelijke), those who participate in committing them (medeplegen or mededader), those who encourage (uitlokker) or those who help commit tax crimes (mefeplichtige). This is done to hold the perpetrator accountable[10].

In connection with the tax crime case committed by PT Trubustex, criminal sanctions were imposed on the defendant JK, so that the defendant was sentenced to [11] crimes: (a) Imprisonment for 3 (three) years and a fine of 2 (two) X (times) IDR 3,800,451,644.00 (three billion eight hundred million four hundred fifty one thousand six hundred and forty four rupiah) + (plus) Rp. 35,095,343,691.00 (thirty five billion ninety five million three hundred forty three thousand six hundred and ninety one rupiah) + (plus) IDR 34,926,641,649.00 (thirty four billion nine hundred twenty six million six hundred forty one thousand six hundred and forty nine rupiah) = (equivalent to) IDR 147,644,873,968.00 (one hundred forty-seven billion six hundred forty-four million eight hundred seventy-three thousand nine hundred and sixty-eight rupiah) and if the Defendant does not pay no later than 1 (one) month after the Court Decision becomes enforceable If the law If the law remains, the property can be confiscated by the Prosecutor's Office and then auctioned off to pay the fine. (b) Burden the Defendant to pay court costs at the cassation level of Rp. 2,500.00 (two thousand five hundred rupiah).

Regarding criminal sanctions, there are four criminal sanctions that have been amended by the Job Creation Law, namely: (1) Reduction of sanctions for self-disclosure for wrongful acts as regulated in Article 8 paragraph (3) of the KUP Law. Article 8 paragraph (3) of the KUP Law regulates self-disclosure of wrongdoing. Taxpayers whose Tax Preliminary Proofs are checked pay the outstanding taxes owed. Apart from paying the basic tax, there are also administrative sanctions. The payment of sanctions aims to prevent Preliminary Evidence from being forwarded to the tax investigation process. Previously, this administrative sanction was 150%. After the Job Creation Law was implemented, the above administrative sanctions were only 100%. (2) Elimination of Underpayment Tax Assessment Letter (SKPKB) Article 13 paragraph (5) of the KUP Law. Article 13 paragraph (5) of the KUP Law regulates that if a Taxpayer is convicted of committing a crime in the field of taxation which can cause losses to state revenues in the form of taxes based on a court decision that has permanent legal force, then the tax office can issue a tax underpayment assessment letter. (SKPKB) in the amount of the court decision plus a maximum interest penalty of 48%. After the Job Creation Law came into effect, the provisions of Article 13 paragraph (5) of the KUP Law were removed. (3) Elimination of criminal sanctions due to negligence for the first time in accordance with the provisions of Article 13A of the KUP Law. This article regulates the criminal sanctions imposed, namely that the first criminal offense does not need to be punished. However, it is enough to be charged with an Underpayment Tax Assessment Letter (SKPKB). (4) Elimination of the Additional Underpayment Tax Assessment Letter (SKPKBT) Article 15 paragraph (4) of the KUP Law. Article 15 paragraph (4) of the KUP Law regulates if a taxpayer is convicted of committing a crime in the field of taxation which can cause losses to state revenues in the form of taxes based on a court decision which has permanent legal force. The tax office can issue a tax underpayment assessment letter. Additional (SKPKBT) amounting to the court decision plus a maximum interest penalty of 48%. After the Job Creation Law came into effect, the provisions of Article 15 paragraph (4) of the KUP Law were removed.

Reduction of sanctions in Article 44B of the KUP Law from 4 times to 3 times. Article 44B paragraph (2) of the KUP Law states that the termination of investigations into criminal acts in the field of taxation as referred to in paragraph (1) is only carried out after the Taxpayer has paid off tax debts that have not been paid or have been underpaid or that should not have been returned and added with administrative sanctions in the form of a fine of 3 (three) times the amount of tax that is not or underpaid, or that should not be refunded.

Criminal sanctions in tax crimes are aimed at perpetrators of criminal acts, both individuals and entities, who fulfill the formulation of the principles of tax law, in the form of imprisonment or fines as regulated in Article 38 of the KUP Law and the Job Creation Law, for violations of tax crimes. due to negligence and causing losses. on state income. Meanwhile, violations of tax crimes committed intentionally and causing loss to state revenues are punishable by imprisonment and fines as regulated in Article 39 and Article 39AUU KUP and the Job Creation Law.

These three types of criminal penalties are still at the basic criminal level, in the sense that the criminal penalties that may be imposed on perpetrators of criminal acts (crimes) in the field of taxation are apparently still not binding criminal penalties as known in Article 10 of the Criminal Code 20. The criminal sanction of a

fine according to Article 30 of the Criminal Code can be replaced (subsidiary) with imprisonment for a minimum of one day and a maximum of six months, if the convict is unable to pay the fine as regulated in Article 30 of the Criminal Code. Criminal code..

### **Person Responsible for Tax Crimes**

Responsibility for tax crimes committed by corporate taxpayers (legal entities) is the responsibility of the corporate management individually and collectively as regulated in Article 32 paragraph (1) and paragraph (2) of the KUP Law and the Job Creation Law,

"(1) In carrying out their rights and obligations in accordance with the provisions of tax laws and regulations, Taxpayers are represented in terms of:

- a. Agency by Management.
- b. An entity declared bankrupt by a curator.
- c. An agency that is dissolved by the person or entity assigned to carry out the settlement;
- d. Agency in liquidation by the liquidator;
- e. Inherited assets that have not been divided by any of the heirs, executors of the will or those administering the inherited assets; or.
- f. Minors or persons under the care of their guardian or custodian

(2) The representatives as intended in paragraph (1) are personally and/or jointly responsible for the payment of tax owed, unless they can prove and convince the Director General of Taxes that it is absolutely impossible for them in their position to do so. must be responsible for the taxes owed. debt".

From several provisions in the Law above, there is indeed a desire to place a legal entity or legal entity as the perpetrator of a criminal act, but regarding accountability the direction of development is unclear. The measure used to determine whether a legal entity has committed a criminal act according to I Dewa Made Suartha is based on work relationships or other relationships and is based on actions within the legal entity environment..

Judges have difficulty in applying the mens rea element of proof carried out by legal entities in accordance with the principle of "no crime (punishment) without fault" or what is known as "Geen Straf Zonder Schuld" in the Continental European concept and "Actus Non Facit Reum Nisi Mens Sit Rea " in the Anglo Saxon concept ("An act does not constitute a mistake, unless the thought is guilty") as regulated in Article 44 of the Criminal Code. Proving guilt (mens rea) in legal entities has been completed since the Supreme Court officially stipulated Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Legal Entities ("Perma 13/2016") as a guideline for law enforcement officials in handling criminal cases carried out by legal entities [13] . Legal entities can be held criminally responsible in accordance with the criminal provisions for legal entities in the law. Laws governing legal entities.

Based on the explanation above, liability in tax crimes is responsibility based on mistakes. In tax crimes committed by legal entities, criminal liability can be given to corporate taxpayers because the entity benefits or benefits from tax crimes, namely paying more taxes. a fraction of the amount owed to the state. In Article 92 of the Limited Liability Company Law number 40 of 2007, management is subject to criminal sanctions and corporate taxpayers as legal entities can be subject to criminal sanctions: (1) The right to facilities is revoked (Article 38 of the Criminal Code) (2) Confiscating or confiscating property (company assets) that role or connection with a violation (Article 39 of the Criminal Code), or revoke the use of facilities or business permits for a certain period of time (Article 41 of the Criminal Code). (3) Business license revoked.

### ***Ultimum Remedium in Tax Law Enforcement***

One of the principles in tax policy is ultimum remedium, meaning that criminal sanctions are a last resort if all administrative efforts have been taken and have been unsuccessful (exhaustion of remedies). The principle of ultimum remedium which makes criminal sanctions the last resort in a series of law enforcement stages is a general principle inherent in formal taxation legal systems throughout the world, both in countries that adhere to Continental European and Anglo-Saxon legal systems. This is understandable, because unlike the Anti-Terrorism Law or the Anti-Corruption Law which applies the primum remedium principle, the tax system is aimed at collecting state revenues, not punishing perpetrators of tax crimes. Based on this objective, the application of the ultimum remedium principle in tax crimes has justification and legitimacy.

Criminal sanctions in tax crimes are the final weapon or ultimum remedium which will be applied if administrative sanctions are deemed insufficient to achieve law enforcement and society's sense of justice, so the KUP Law and the Job Creation Law also regulate criminal provisions. 27 . One of the tax provisions regulated in Indonesia as a legal state is to guarantee the implementation of taxpayers' rights and obligations,

namely criminal provisions for taxpayers who do not have good intentions in paying taxes. The punishment applied in the field of taxation is in accordance with the characteristics of the crime itself as an *ultimum remedium*.

In Indonesia, the application of the *ultimum remedium* principle has emerged since the first tax reform era in 1983. The *ultimum remedium* principle is read through Article 8 paragraph (3) of Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation, which states that: "Even though an examination has been carried out, as long as no investigative action has been carried out regarding any untruths committed by the Taxpayer as intended in Article 38, no examination will be carried out regarding any unrighteous acts committed by the Taxpayer. Taxpayer, if the Taxpayer voluntarily reveals the untruthfulness of his actions accompanied by underpayment of the amount of tax actually owed accompanied by an administrative sanction of twice the amount of underpaid tax.

Based on the provisions of Article 8 paragraph (3) of Law Number 6 of 1983 concerning General Provisions and Tax Procedures, Taxpayers have the right to stop the process of examining preliminary evidence at the investigation stage after admitting their mistake and paying their tax. The deficiency is accompanied by an administrative fine of 2 (two) times or 200% (two hundred percent) of the amount of underpaid tax. The application of the *ultimum remedium* principle was then expanded in Article 44B paragraph (1) letter a of Law Number 9 of 1994 concerning Amendments to Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation, which states that: "In the interests of state revenue, at the request of the Minister of Finance, the Attorney General may stop investigations into criminal acts in the field of taxation: the termination of investigations into criminal acts in the field of taxation as intended in paragraph (1), will only be carried out after the Taxpayer has paid taxes that are non-existent or underpaid or that should not be returned, plus administrative sanctions in the form of a fine of four times the amount of tax that is not paid or underpaid or that should not be returned.

The provisions in this article allow taxpayers to prevent the escalation of the legal process from the investigation level to the prosecution level. Based on the provisions of this article, at the request of the Minister of Finance with the approval of the Attorney General, the Taxpayer can stop the investigation he is currently undertaking, after paying off the underpayment of tax and administrative fines 4 (four) times or 400% (four hundred percent) of the amount of underpaid tax. paid. The second tax reform that began after the political reform in 1998 also maintained the principle of *ultimum remedium* in the national tax system. Material: Article 8 paragraph (3) of Law Number 6 of 1983 concerning General Provisions and Tax Procedures and Article 44B paragraph (1) letter a of Law Number 9 of 1994 concerning Amendments to Law Number 6 of 1983 concerning General Provisions and Tax procedures are implemented through Law Number 16 of 2000 concerning the Second Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures.

New changes emerged through Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures. Article 8 paragraph (3) explains that the amount of administrative sanctions has decreased from 2 (two) times or 200% (two hundred percent) of the amount of underpaid tax to 1.5 (one and a half) times or 150% (one hundred and fifty percent). ). In full, Article 8 paragraph (3) of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures, states that: "Even though an examination has been carried out, there has been no investigative action. has been carried out regarding the existence of untruths committed by the Taxpayer as intended in Article 38, no examination of the Taxpayer's incorrect acts will be carried out, if the Taxpayer voluntarily reveals the untruthfulness of his actions accompanied by payment of the underpayment of the actual amount of tax owed along with administrative sanctions in the form of a fine of 150% (one hundred and fifty percent) of the amount of underpaid tax.

Article 8 paragraph (3) of the KUP Law has undergone changes in the Job Creation Law, namely as follows: "Even though a preliminary evidence examination has been carried out, the Taxpayer of his own accord can reveal in a written statement the untruth of his actions, namely: a. did not submit a notification letter; or b. submit a notification letter whose contents are incorrect or incomplete, or attach information whose contents are incorrect as intended in Article 38 or Article 39 paragraph (1) letters c and d, as long as the investigation has not been notified to the Public Prosecutor through an official investigator from the Indonesian National Police".

Regarding disclosure of wrongful acts in Article 8 paragraph (3) of the KUP Law, there is a reduction in administrative sanctions in the form of fines of up to 100% of the amount of underpaid tax plus Article 8 paragraph (3a) of the KUP in the Job Creation Law, namely as follows: Disclosure of acts is incorrect as intended in paragraph (3) accompanied by payment of the underpayment of tax actually owed accompanied by administrative sanctions in the form of a fine of 100% (one hundred percent) of the amount of underpaid tax. "

Apart from that, the provisions in Article 13A of the KUP Law provide for larger administrative sanctions, namely 2 (two) times or 200% (two hundred percent) of the amount of underpaid tax. In full, Article

13A of the KUP Law states that: "Taxpayers who, due to their negligence, do not submit a Tax Return or submit a Tax Return but the contents are incorrect or incomplete, or attach information whose contents are incorrect so that it can harm state revenues, are not subject to criminal penalties." . sanctions if the error is committed for the first time by the Taxpayer, and the Taxpayer is obliged to pay off the underpayment of the amount of tax owed accompanied by an administrative sanction in the form of an increase of 200% (two hundred percent) of the amount of underpayment of tax determined through the issuance of an Underpayment Tax Assessment Letter .

The provisions of Article 13A are specifically aimed at taxpayers who are negligent and who first violate the provisions of Article 38 of the KUP Law which regulates criminal sanctions related to SPT. Article 13A of the KUP Law was deleted in the Job Creation Law.

The abolition of Article 13A of the KUP Law in the Job Creation Law does not mean that the ultimum remedium in criminal acts does not exist, because if a Taxpayer is being investigated for committing a tax crime and the amount of tax that must be paid has not been issued a Tax Assessment Letter, the Taxpayer can voluntarily reveal the incorrectness of the report Notification Letter by paying off the principal amount of tax owed plus administrative sanctions in the form of a fine of 100% (one hundred percent) of the unpaid tax amount. pay or underpay, then the Taxpayer is not audited as regulated in Article 8 paragraph (3) and Article 8 paragraph (3A) of Law Number 6 of 1983 concerning General Provisions and Tax Procedures which have been amended by Law Number 16 2009 and Law Number 11 of 2020 concerning Job Creation.

Furthermore, the provisions in Article 44B of the KUP Law state that:

- (1) For the purposes of state revenue, at the request of the Minister of Finance, the Attorney General may stop investigations into criminal acts in the field of taxation within a maximum period of 6 (six) months from the date of the request.
- (2) Termination of investigations into criminal acts in the field of taxation as referred to in paragraph (1) is only carried out after the Taxpayer has paid off the tax debt which was not or was underpaid or which should not have been returned and added with administrative sanctions in the form of a fine of 4 (four) times the amount of tax which was not or underpaid, or which should not be returned.

Article 44B of the KUP Law has not changed materially, except for the time limit for the Attorney General to stop an investigation requested by the Minister of Finance, a maximum of 6 (six) months after the request letter was sent. The significant change is in the Explanation section. If the Explanation of Article 44B paragraph (1) of Law Number 9 of 1994 concerning Amendments to Law Number 6 of 1983 concerning General Provisions and Tax Procedures and Law Number 16 of 2000 concerning Second Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures simply states "quite clear", the Elucidation of Article 44B paragraph (1) of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures, explains as follows: in the interests of state revenue, at the request of the Minister of Finance, the Attorney General can stop investigating tax crimes as long as the criminal case has not been submitted to court."

The explanation of Article 44B paragraph (1) of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures reveals that the Attorney General's authority to stop an investigation includes stopping the prosecution. Thus, if previously the Law concerning General Provisions and Tax Procedures only gave authority to stop investigations, Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures seeks to expand it by stop the prosecution.

Article 44B paragraph (2) of the KUP Law has undergone changes in the Job Creation Law, namely as follows: "Termination of investigations into criminal acts in the field of taxation as referred to in paragraph (1) is only carried out after the Taxpayer has paid off tax debts that are not or underpaid or that should not be returned and added with administrative sanctions in the form of a fine of 3 (three) times the amount of tax that is not or underpaid or that should not be returned."

The government maintains the principle of ultimum remedium in the process of investigating tax crimes in the Job Creation Law or Omnibus Law Ciptaker. However, the administrative sanctions imposed on taxpayers are not as large as the provisions in the KUP Law which reach 4 (four) times the amount of unpaid tax. In the Job Creation Law, taxpayers who want to escape from tax crimes, apart from paying or paying off their tax debt, also only pay 3 (three) times the amount of unpaid tax.

The ultimum remedium principle places criminal settlement as the last resort in the tax criminal process. For the purposes of state revenue at the request of the Minister of Finance, the Attorney General can stop investigations into tax crimes no later than 6 months from the date of the request letter, after the Taxpayer has paid off the outstanding tax debt. not paid or underpaid or which should not have been returned plus



administrative sanctions in the form of a fine of 3 (three) times the amount of tax which was not paid or underpaid or which should not have been returned.

Imposing criminal sanctions in tax crimes is the final effort to increase taxpayer compliance (ultimum remedium). In the interests of the state for revenues from the APBN and consideration of the imposition of criminal sanctions is counterproductive to the tax function for state revenues 28 . The provisions of Article 8 paragraph (3) and Article 44B of the KUP Law and the Job Creation Law, where criminal sanctions can be replaced with administrative sanctions in the form of additional fines ranging from 100% to 300% of unpaid or underpaid taxes, indicate that criminal tax sanctions are ultimate. remidium.

So criminal sanctions in tax crimes show that it is in the interests of the state to receive state revenues, the imposition of tax criminal sanctions is counter-productive to the function of tax as state revenue, so tax revenues are premium remedium and the imposition of tax criminal sanctions is ultimum remedium, meaning that tax criminal sanctions are The latest effort to increase taxpayer compliance after the tax administration efforts that have been made have not been effective in returning and compensating for losses suffered by the state.

Criminal legal sanctions that are ultimum remidium demonstrate the existence of the principle of legality and legal certainty, namely a guarantee that legal provisions can be understood and can be implemented safely, thereby providing justice for perpetrators, victims and the state against future criminal acts. taxation sector in Indonesia 30 . Even though criminal law has the nature of an ultimum remedium, in formulating criminal law sanctions in the field of taxation, the formulation must take into account aspects of justice, expediency and certainty for the protection of perpetrators of criminal acts in the field of taxation, victims and the state 31 . Because according to Sudarto, the use of criminal law is to treat a symptom (curriren am symptom) and not a solution by eliminating the causes.

The limited capacity of criminal law so far is also caused by the nature or essence and function of criminal law itself. Criminal law sanctions so far are not a cure (remedium) to overcome the cause (source) of disease, but only to overcome the symptoms or consequences of disease. In other words, criminal (legal) sanctions are not "causative treatment", but only "symptomatic treatment". Symptomatic treatment through drugs in the form of "criminal sanctions" still contains many weaknesses, so its effectiveness is always questioned. In particular, ("criminal") drugs themselves also contain contradictory/pardoxical and negative elements that are detrimental or at least can cause negative side effects.<sup>33</sup> .

### ***Tax Crime Court***

Settlement of criminal cases in the field of taxation is not through the tax court but through courts within the general justice environment. This is because the tax court is only limited to handling disputes in the field of taxation relating to appeals or lawsuits submitted by taxpayers or tax bearers, as regulated in Article 2 of Law Number 14 of 2002 concerning the Tax Court. Regarding the judiciary, the government promulgated Law Number 2 of 1986 concerning the General Court which was amended by Law Number 8 of 2004 which states that all judicial bodies are under the authority of the Supreme Court as the highest court.

Regarding the authority (authority) of the court, it is regulated in Article 50 of Law Number 2 of 1986 concerning the General Court, which states that: "The District Court has the duty and authority to examine, decide and settle criminal cases and civil cases at the first instance" The authority of the High Court is regulated further in Article 51 of Law Number 2 of 1986 concerning General Courts, which states as follows:

- (1) The High Court has the duty and authority to hear criminal cases and civil cases at the appeal level.
- (2) The High Court also has the duty and authority to adjudicate at the first and final level jurisdictional disputes between District Courts in its jurisdiction.

The general explanation of point 2 of Law Number 2 of 1986 concerning General Courts states that judicial power within the General Courts is exercised by the District Courts and High Courts which are under the Supreme Court. It is further regulated that courts within the general justice environment are also courts for economic crime cases, child crime cases, road traffic violation cases, and other cases determined by law.

Based on these provisions, if a criminal offense occurs in the field of taxation, the resolution is carried out through criminal justice which is handled in stages by the District Court. As a basis for resolving criminal cases in the field of taxation, apart from using formal law, the Law on General Provisions and Tax Procedures, it also uses Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). These two provisions use the principle of *lex specialis derogat lex generalis*, where as long as it is not specifically regulated in the Law on General Provisions and Tax Procedures, what applies is the provisions in the Criminal Procedure Code (KUHAP).

### ***Criminal Decision on Tax Crimes***

The meaning of decisions that have permanent legal force (*inkracht van gewijsde*) related to criminal cases is contained in the explanation of Article 2 paragraph (1) of Law no. 22 of 2002 concerning Clemency which reads: What is meant by "court decision that has obtained permanent legal force" is: (1) First instance court decision that is not subject to appeal or cassation within the time determined by the Criminal Procedure Law. ; (2) Appeals court decisions that are not appealed within the time specified by the Criminal Procedure Law; or (3) Cassation decision.

In Article 13 paragraph (5) and Article 15 paragraph (4) of Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended by Law Number 16 of 2009, the DJP can still issue Underpayment Tax Assessment Letters ( SKPKB) and Additional Underpayment Tax. Determination Letter (SKPKBT) for Taxpayers who have been found guilty of committing a tax crime based on a court decision that has permanent legal force (*inkracht van gewijsde*). The issuance of SKPKB and/or SKPKBT is accompanied by an interest penalty of 48% of the amount of underpaid or unpaid tax.

Based on the Supreme Court Circular Number 2 of 2019 point 5b, related to the issuance of SKPKB and/or SKPKBT to Taxpayers who have been convicted of tax crimes, it is regulated that "if a tax case has been tried and decided by a judge's decision which has permanent force , then it is no longer permissible to carry out other law enforcement actions either outside or before the court because the criminal judge's decision in a tax crime is to end law enforcement efforts (*litis finiri*) and the principle that applies is the *ultimum remedium* principle."

The provisions of Article 13 paragraph (5) and Article 15 paragraph (4) relate to the issuance of SKPKB and SKPKBT to Taxpayers who have been convicted of committing tax crimes based on court decisions that have permanent legal force in Law Number 6 of 1983 concerning General Provisions and Tax Procedures which were most recently amended by Law Number 16 of 2009, have been deleted in Law Number 11 of 2020 concerning Job Creation.

### ***Disparity in Criminal Decisions in Tax Crimes***

In the principles of tax law, the imposition of sanctions is carried out to optimize state revenues from the tax sector. This can be clearly seen from the provisions of Article 44B of the KUP Law which emphasizes the aspect of paying money as a substitute for criminal sanctions. The emergence of subsidiary judge decisions on fines because there are no tools for prosecutors to execute or enforce judge decisions in the form of fines. Meanwhile, the KUP Law and the Job Creation Law do not regulate imprisonment as a substitute for fines.

Concrete examples of tax crimes are as follows: (1) Based on the Bandung High Court Decision Number 4147 K/Pid.Sus/2019, the perpetrator of a tax crime involved in the PT Trubustex case, namely Johny Kalwani, was charged with imprisonment and a fine at the same time, namely: 35 (a) Imprisonment for 3 (three) years and a fine of 2 (two) plus IDR 35,095,343,691.00 (thirty five billion ninety five million three hundred forty three thousand six hundred and ninety one rupiah) + (plus) IDR 34,926,641,649.00 (thirty four billion nine hundred two thirty-six million six hundred forty-one thousand six hundred and forty-nine rupiah) = (equal to) IDR 147,644,873,968.00 (one hundred forty-seven billion six hundred forty-four million eight hundred seventy-three thousand nine hundred and sixty eight rupiah) and if the Defendant does not pay within 1 (one) month after the Court Decision obtains permanent legal force, then his assets can be confiscated by the Public Prosecutor and then auctioned off to pay the fine. (b) Burden the Defendant to pay court costs at the cassation level of Rp. 2,500.00 (two thousand five hundred rupiah). (2) Decree Number 1340 K/PID.SUS/2018 dated September 5 2018. Tiadi Lukman and Hendro Gunawan alias Aheng as controllers of 5 companies, namely PT. Permata Hijau Witmas, PT. Cipta Karya Human, PT. Al Ansar Bina Sawindo Plantation, PT. Batanghari Oilindo Palm and PT. Putri Windu Semesta, with the decision to sentence the Defendant: 36 (a) Sentencing the Defendant TIANDI LUKMAN to 2 (two) years in prison; (b) Sentence the Defendant to a fine of Rp. 40,673,717,921.00 with the provision that if the fine is not paid it will be replaced by imprisonment for 6 (six) months; (3) Decision Number 148/Pid.Sus/2019/PN Blb dated 17 June 2019, with the decision to sentence the Defendant Lee Gil Woo as the Main Director of PT Beronica; 37, namely, (a) Sentencing the Defendant to imprisonment for 3 (three) years and 6 (six) months; (b) A fine of 2 x IDR was also imposed on the Defendant. 16,050,144,250.00 = Rp. 32,100,288,500.00 If the Defendant does not pay the fine no later than 1 (one) month after the Court's decision obtains permanent legal force, then his assets can be confiscated by the Public Prosecutor, then auctioned to pay the fine, in the event that the Defendant has no assets. sufficient to pay the fine, the Defendant shall be sentenced to imprisonment in lieu of a fine for 6 (six) months. (4) Decision no. 1517 K/Pid.Sus/2012 dated 13 June 2013, with a decision to impose a crime on the Defendant OEI NICO WIJAYA alias NICO WIJAYA as attorney or employee of PT. VALID; (38) namely by sentencing the Defendant OEI NICO WIJAYA alias NICO WIJAYA to imprisonment for 3 (three) years and a fine of 3 (three) times the tax owed;

Looking at the 4 (four) examples of criminal cases for corporate taxpayers above, it can be seen that there are disparities in judges' decisions in imposing criminal sanctions for tax crimes committed by corporate taxpayers. In accordance with Article 32 of the KUP Law and the Job Creation Law, administrators are subject to criminal sanctions individually or jointly as representatives of the Agency. In the tax crime committed by PT Truustex, Johnny Kalwani also received a prison sentence for submitting a Tax Return (SPT) whose contents were incorrect, causing losses to state revenues. Defendant JK reported an incorrect SPT to apply for a tax refund or compensation. Apart from that, the defendant JK also helped, issued and used tax invoices, proof of levies or proof of tax deductions that were not based on actual transactions. The reason is, the judge saw the large state losses resulting from tax crimes committed by PT. Trubustex with Johnny Kalwani as the main perpetrator of tax crimes must be held accountable..

In the case of Tiadi Lukman who is the controller of 5 (five) companies, Lee Gil Woo as the Main Director of PT Beronica and the defendant Oei Nico Wijaya alias Nico Wijaya as a representative or employee of PT. SAH, subject to tax criminal sanctions in the form of imprisonment between 2 (two) to 3 (three) years and a fine of between 2 (two) to 3 (three) times the amount of tax owed, with a fine of the amount that can be replaced (subsidiary) with imprisonment for 6 months. In this way, the state does not receive any tax revenue from perpetrators of tax crimes who have harmed state revenue.

Such conditions will not achieve the philosophy of the objective of tax law, namely optimizing state revenues, because after imprisonment as a substitute for criminal fines ends, the perpetrators of tax crimes have lost their obligation to pay their tax debts and for the Corporate Taxpayers themselves. they are not subject to criminal sanctions at all, this creates injustice for the state and society as victims.

## V. CONCLUSION

Based on the results of the research above, the following conclusions can be drawn: (1) Enforcement of tax criminal law in Indonesia is not in accordance with the Ulltimum Remedium principle. The imposition of criminal sanctions in tax crimes committed by taxpayers with imprisonment and fines on administrators without providing responsibility for returning or recovering state revenue losses is contrary to the principles of social justice. When the perpetrator of a tax crime is serving a prison sentence and a fine, the fine can be replaced or subsidized by imprisonment if he is unable to pay the fine, this will result in losses to state revenue, namely loss or reduction in state revenue. rights in the form of tax revenues. (2) The judge's decision based on Supreme Court Decision Number 4147 K/Pid.Sus/2019 is in accordance with the Ulltimum Remedium principle, so that efforts to recover state revenue losses are optimally successful. However, judges' decisions still experience disparities in the tax law enforcement process. Efforts to recover losses from state revenues in order to realize social justice and general welfare, which are the duties and responsibilities of the state, therefore prosecution and criminal responsibility for tax crimes committed by taxpayers must be integrative, namely in addition to law enforcement. repressive), for prevention (preventive), and must also be accompanied by efforts to recover losses in state revenues (restorative). The penalties imposed on perpetrators of tax crimes are fines and/or additional penalties in the form of other acts or what is better known as the double track system formula.

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