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How to apply Premium Remedium in the Taxation Sector

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ABSTRACT

Criminal law enforcement against tax crimes in Indonesia has raised debates regarding applying the premium remedium or ultimum remedium principle. This study explores the legal issues arising from this change, including the submission of a judicial review of Article 39 paragraph (1) letters d and i by a taxpayer, which is considered to have a premium remedium nuance. This article examines the application of criminal law to tax crimes in Indonesia in the context of the self-assessment system and the amended regulations. With a normative approach, this study aims to assess whether criminal law in tax crimes tends to be more on the ultimum remedium or premium remedium principle, and to highlight the harmonization between the self-assessment system and criminal law enforcement. This study finds that the application of criminal law to tax crimes in Indonesia tends to follow the ultimum remedium principle, where criminal sanctions are used as a last resort after administrative measures are ineffective. Despite the elimination of Article 13A in the KUP Law which has raised debates regarding the application of premium remedium, law enforcement still emphasizes taxpayer compliance in the self-assessment system. In addition, the KUP Law also accommodates the termination of investigations in the interests of state revenue if taxpayers are willing to pay their tax obligations.

Introduction

The researcher began this research with a legal adage that mentions *lex semper dabit remedium* which means that the law always provides a solution (Tim Hukum Online, 2024). For the term *primum remedium* or *premium remedium* which are both widely used in scientific writings and books on law, in this paper in the author's original writing, the term *premium remedium* will be used because the term has been used in the decision of the Constitutional Court which has permanent legal force (Putusan Mahkamah Konstitusi Nomor 30/PUU-XXII/2024, 2024) Meanwhile, both excerpts from online articles, journals, scientific writings and books on the law will be presented by the author according to the original. The principles *of premium remedium* and *ultimum remedium* used in this paper are related to implementing criminal law enforcement for tax crimes in Indonesia (Subyakto, 2015).

As emphasized in Article 23A of the 1945 Constitution, taxes and other levies that are coercive for the State are regulated by law. This provision has clearly described that the State's power in collecting taxes cannot be exercised arbitrarily. Thus, these provisions have implications for implementing the law in implementing its sanctions must also be based on the principle of legal certainty (Maroni, 2015).

Law enforcement in the field of taxation must still be the implementation of the mandate contained in Article 23A of the 1945 Constitution, although there are several challenges and problems. Problems arise in enforcing tax and levy laws in Indonesia, which is expected to impact the increasing voluntary compliance of taxpayers. It is known that the tax collection system adopted by Indonesia is a *self-assessment system*, meaning that taxpayers themselves consciously register, calculate calculate, deposit and report their tax obligations. So the enforcement of criminal law on criminal acts in Indonesia's taxation field must be harmonized with *the self-assessment system*.

KBBI, (2024) *Strafbaar feit* in the Dutch Criminal Code, *Wetboek van Strafrecht* (WvS). A WvS has also been adopted in Indonesia through the Criminal Code (KUHP). According to the Great Dictionary of the Indonesian Language (KBBI), a crime is a crime (about murder, robbery, corruption, and so on); criminal. Furthermore, a criminal act is defined as a criminal act (criminal act). In general. the law on criminal acts is regulated in the Criminal Code. However, for criminal acts in the field of taxation, provisions apply (KBBI, 2024); *Lex specialis derogat legi general*, which is a provision that specifically overrides general provisions. Therefore. The provisions for tax crimes are specifically regulated in the law in the field of taxation. The KUP Law specifically contains criminal provisions in Chapter VIII. Then, criminal tax provisions are regulated in the material tax law. This provision is contained in the Land and Building Tax Law (PBB), the Stamp Duty Law, and the Law on Tax Collection with Compulsory Letters (PPSP).

The government defines tax crimes regulated in Article 1 number 5 of the Regulation of the Minister of Finance Number 239/PMK.03/2014, which reads:

"Criminal Acts in the Field of Taxation are acts that are threatened with criminal sanctions by laws in the field of taxation, which include Article 38, Article 39, Article 39A, Article 41, Article 41A, Article 41B, Article 41C, and Article 43 of the KUP Law, Articles 24 and 25 of the UN Law, Articles 13 and 14 of the Stamp Duty Law, and Article 41A of the PPSP Law."

which was then amended by Minister of Finance Regulation Number 177/PMK.03/2022 in Article 1 number 6 which reads:

“Criminal Acts in the Field of Taxation are acts that are threatened with criminal sanctions as stipulated in the Law on General Provisions and Procedures of Taxation, the Law on Land and Building Tax, the Law on Stamp Duty, the Law on Tax Collection with Compulsory Letters, and the Law on Access to Financial Information for Tax Purposes.”

In this study, the researcher limits problems related to tax crimes related to Article 38 and Article 39 paragraph (1) of the Law on General Provisions and Tax Procedures (KUP Law).

In criminal law, two key principles guide the application of sanctions: *ultimum remedium* and *premium remedium*. The *ultimum remedium* principle emphasizes that criminal sanctions should be used as a last resort, only after non-punitive measures like administrative or civil remedies have been exhausted, focusing on rehabilitation and fairness. In contrast, *premium medium* prioritizes criminal law as the primary means of

enforcement, with immediate and strict penalties to deter serious offences, such as tax evasion or corruption. The choice between these principles depends on the legal framework and severity of the offence, with *ultimum remedium* promoting voluntary compliance and *premium remedium* enforcing stricter control to prevent harm to society or the state.

Indeed, there is a view thatthe *principle of ultimum remedium* lies in the context of criminality, not in the context of administrative law enforcement, so that the authority to use it lies with the judge and not with the police or prosecutors, so that the principle is considered to be in material criminal law. However, its enforcement is in the court (Sofian, 2022). However, in the context of tax law as *a penal administrative law*, law enforcement of tax crimes cannot ignore the harmonization of *the self-assessment system.* The principle of *primum remedium,* when juxtaposed with *the self-assessment system,* will cause *a gap*, one of which is *the philosophical gap*. One of *the philosophical gaps* is seen in the existence of *ambiguity* (uncertainty, ambiguity) (KBBI, 2024). Justice and legal certainty in the context of taxation as a *penal administrative law*, as the investigation of the criminal act should be a final effort (Irawan, 2022), not as a *primum remedium* for the perpetrators of violations. One of the opinions, namely the opinion of the State Budget and Public Finance Law Expert in the court decision, explains that the spirit of the state financial regime is an administrative settlement because the state prioritizes state revenue (Mahkamah Agung, 2016). This means that even though the *self-assessment system* has been regulated, the tax officer can determine the actual tax payable whose data or information is not filled in and or submitted by the taxpayer correctly, completely, and clearly (Sinaga & Hartanto, 2022). Then, the Criminal Expert in the decision also explained that tax crimes are carried out if the administrative elements can no longer be fulfilled by the taxpayer and cause state financial losses, considering that the nature of tax law is part of civil law and the nature of fiscal (tax officers) is to collect as much tax as possible and regulate it so that it can maximize tax collection (Mahkamah Agung, 2016). The latest news related to the imposition of *the principle of ultimum remedium* or premium *remedium* for tax crimes is that a taxpayer named Puguh Suseno applied material testing of Article 39 paragraph (1) letters d and i of the KUP Law with a letter dated February 5, 2024, which according to the applicant has the nuances of premium remedium (Wildan, 2024).

Based on the explanation above, this writing is intended to examine the implementation of criminal law enforcement for tax crimes in Indonesia, especially Article 38 and Article 39 paragraph (1) of the related KUP Law, whether criminal law enforcement for tax crimes in Indonesia is indeed *premium remedium*. The purpose of this study is to find out how to apply the principle of ultimum remedium and the principle of premium remedium in criminal acts and to find out how to apply Article 38 and Article 39 of the KUP Law in the enforcement of criminal law on tax crimes in Indonesia, ultimum remedium or premium remedium.

The novelty of this research lies in the in-depth analysis of applying the principles of *ultimum remedium* and *premium remedium* in criminal law enforcement in the field of taxation in Indonesia, especially after the elimination of Article 13A in the KUP Law. This research reveals how the regulatory changes impact the harmonization between the self-assessment system and criminal law enforcement, which has not been widely discussed in previous research. In addition, this research also provides a new perspective on how the concept of freies ermessen can be applied in the context of tax

law enforcement to maintain the principle of *ultimum remedium* and optimize state revenues without directly applying criminal sanctions.

Methods

This study employs an interdisciplinary methodology, integrating doctrinal and normative approaches to analyze Indonesia's legal principles governing tax crimes. The doctrinal approach is directed towards examining the legal norms, focusing on how these norms interact vertically (between higher and lower legal provisions) and horizontally (among provisions at the same level of regulation). This approach enables a comprehensive understanding of the hierarchical structure of the law and the consistency of its application, particularly about the principles of *premium remedium* and *ultimum remedium* in criminal law enforcement for tax crimes.

To further strengthen this analysis, the study also incorporates substance analysis, where the content of the legal provisions is scrutinized to identify the underlying principles and their practical implications. This includes the merger of theories in criminal law and taxation, enabling a deeper exploration of how these principles—*premium remedium* and *ultimum remedium*—are applied within the context of the *KUP Law* (Law on General Provisions and Tax Procedures). By merging legal theories with doctrinal research, the study seeks to evaluate whether the legal framework aligns with broader criminal law principles or deviates based on specific regulatory needs in taxation.

The study relies on secondary data collection through a detailed literature review. Legal sources, including statutory laws, legal doctrines, scholarly articles, court decisions, and governmental regulations, are the primary data sources. These materials provide a foundation for analyzing the principles of *premium remedium* and *ultimum remedium* within the KUP Law. The study also reviews historical legislative amendments, such as the abolition of Article 13A of the KUP Law and subsequent legal reforms, to trace the evolution of the application of criminal sanctions in tax law. In addition to legal texts, the study will utilize case law analysis to examine judicial interpretations of the principles in tax crime cases. Constitutional Court rulings and Supreme Court decisions related to tax offences are examined to understand how these principles have been applied in practice and how courts have interpreted the balance between administrative and criminal penalties in taxation matters.

Data analysis in this study follows a qualitative approach. The analysis begins with classifying and interpreting the legal norms extracted from the collected legal documents. The relationships between these norms are examined to identify consistencies, gaps, or contradictions within the legal framework. Vertical analysis compares higher-level laws, such as constitutional provisions, with lower-level regulations, while horizontal analysis compares similar-level laws for coherence and harmony.

Furthermore, the analysis incorporates comparative legal interpretation to evaluate how the principles of *premium remedium* and *ultimum remedium* are applied across different jurisdictions or in similar administrative penal systems outside of Indonesia. By merging doctrinal legal analysis with theoretical interpretations, the study seeks to provide a holistic view of how criminal sanctions in tax law are designed and enforced, and whether the legal system prioritizes punitive measures or voluntary compliance. The conclusions will be drawn based on the interplay between the legal

provisions, judicial decisions, and theoretical insights, providing recommendations for improving the balance between administrative and criminal enforcement in Indonesia's tax law framework.

Results and Discussion

Tax law is part of administrative law as well as part of public law because it regulates the legal relationship between the ruler and taxpayers related to the public interest. Meanwhile, tax law is included as part of administrative law because it relates to the legal relationship between the government and the people who are governed.

The imposition of criminal sanctions on administrative law can also be called "*administrative penal law*" (Ali, 2018). Because tax law is part of administrative law, the provision of criminal sanctions can also be considered *administrative penal law.* The presence of criminal sanctions in administrative regulations aims to comply with administrative regulations and not to punish (Maroni, 2015). In line with that, taxation aims to collect as much state revenue as possible, not to punish by providing criminal sanctions in the form of imprisonment.

Regarding taxes as a state obligation, the subject, the object, and the amount of tax are determined based on laws and regulations. Every tax subject who has fulfilled the subjective and objective requirements stipulated in the tax law must fulfil the tax obligation. The fulfilment of tax obligations by the tax collection system in Indonesia is based on *the self-assessment* system. In principle, the *self-assessment* system is a mechanism for fulfilling tax obligations that require taxpayers to calculate, pay, and report the tax payable by the provisions (Khalimi & SH, 2020) (Khalimi & Iqbal, 2020). Implementing *the self-assessment* system is one of the things that shows that the existence of taxes philosophically is a form of awareness and participation of the people. The use of *the self-assessment* system in Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (KUP Law) is carried out with a more straightforward system, mechanism, and procedure for the implementation of tax rights and obligations that are regulated. as affirmed in the general explanation number 3 of the KUP Law:

"Simple systems, mechanisms, and procedures for the implementation of tax rights and obligations are the characteristics and patterns in the amendment of this Law while still adhering to *the self-assessment* system. The change is especially related to improving the balance of rights and obligations for the taxpayer community so that the taxpayer community can better carry out their tax rights and obligations."

The legal basis *for self-assessment* is regulated in Article 12 paragraph (1) of the KUP Law, which states, "Every taxpayer is obliged to pay the tax owed by the provisions of tax laws and regulations, by not relying on the existence of a tax determination letter." In other words, this system tends to focus more on the active role of taxpayers in tax collection (Khalimi & Iqbal, 2020). The implementation of *the self-assessment* system can be found in income tax, value-added tax, sales tax on luxury goods, motor vehicle tax, motor vehicle name return duty, and land and building rights acquisition duty (Saidi, 2018) (M. et al., 2023).

Although the tax collection system in Indonesia is based on *a self-assessment* system, the KUP Law provides an opportunity for the Directorate General of Taxes (DGT) to take action in supervising the reporting carried out by taxpayers with *a self-assessment* system in order to fulfil formal obligations and/or material obligations in tax

provisions. One form of supervision carried out by the DGT is conducting tax audits. Three Taxpayer circumstances require the Tax Inspector to use professional judgment (*professional judgement*) to determine the follow-up of the audit results, whether to carry out administrative actions with tax determination or propose to carry out law enforcement in the field of taxation with a proposal to conduct a Preliminary Evidence Examination. The circumstances of the Taxpayer that are known from the results of the audit are: 1) the Taxpayer refuses to conduct the audit, 2) the Taxpayer does not lend or does not fully lend the books records, and/or documents requested by the Auditor, and 3) there are indications of criminal acts in the field of taxation (Sultony, 2018). The authority to determine whether to take administrative action or the proposal for a Preliminary Evidence Examination based on professional considerations has fulfilled the definition and scope of discretion in Law Number 30 of 2014 concerning Government Administration (AP Law) (Sultony, 2018).

Discretion in the language is wisdom, discretion, judgment, and freedom to determine. *Discretionary* means the freedom to decide or choose at the discretion of a person (Reza, 2022). According to Ramlan (2018) discretion is defined as one of the formulations of the power of state government, namely providing space for freedom of movement (giving *freies ermessen*) to public officials who are given the power to determine themselves, how to interpret (capture the purpose and purpose) of power to organize the government that is delegated and determine for themselves whether he will exercise his power, as well as the public officials can determine for himself when he will do so and how to use that power (Ramlan, 2018). Prajudi Atmosudirjo (1995, p. 82) defines discretion, *discretion* (English), *discretionair* (French), and *freies ermessen* (Germany) as freedom of action or decision-making from authorized and competent State administrative officials according to their own opinions. In Indonesia's positive law, the definition of government discretion has been regulated in Article 1 Number 9 of Law Number 30 of 2014 concerning Government Administration (AP Law) as follows: "Discretion is a decision and/or action determined and/or carried out by government officials to overcome concrete problems faced in the administration of government in terms of laws and regulations that provide choices, not regulating, incomplete or unclear, and/or there is government stagnation" (Atmosudirjo, 1995, pp. 479–480).

According to (Ratu, 2012), Freies Ermessen's implementation must be morally accountable to God Almighty and legally based on the upper and lower limits. The upper limit, i.e., the regulation of a lower degree, must not conflict with the regulation of a higher degree. At the same time, the lower limit is that the regulations made or the actions of state administration (both active and passive) must not violate citizens' basic rights and obligations. In addition, when implementing *the ermessen freies, we* must also pay attention to the general principles of good governance (AAUPB).

Definition of *Ultimate Remedium* and *Premium Remedium*

According to Prof. Moeljatno in his book Principles of Criminal Law, criminal law is part of the overall law that applies throughout the country. It establishes the basis of rules to determine which acts are not allowed to be done and which are prohibited, with threats or sanctions in the form of certain crimes for those who violate the prohibition (Moeljatno, 2015).

There is a difference between criminal law and other fields of law in the existence of criminal law sanctions, which are the deliberate threat of suffering committed against crimes with *victims (with victims*) and crimes without *victims (without victims*). The

imposition of criminal sanctions in the form of suffering is what makes criminal law used as a last resort (*ultimum remedium*) to improve human behaviour, especially criminals (criminals), as well as provide psychological pressure so that others do not commit crimes (Van Bemmelen, in his book Andi Zainal Abidin: 1987:16) (Subyakto, 2015).

The level of crime that occurs is a consequence of all problems in human life. New modes of criminal perpetrators will continue to increase along with the rules that have been set by the government. However, the application of criminal sanctions/punishments is not the only solution in reducing the crime rate that occurs. The positive law embraced by this country is a rule that must be enforced in handling criminal cases, therefore the government seeks more flexible legal rules for its citizens with one of the goals to save the nation's generation(Sari et al., 2017).

In contrast to the principle of legality regulated in Article 1 paragraph (1) of the Criminal Code, *ultimum remedium* is not regulated at all in the Criminal Code, so this principle has a very broad interpretation and is very flexible in its use. The judge's legal considerations are important in applying this principle for the defendant in court, whether the defendant is given criminal sanctions or other sanctions that are more relevant in the criminal act prosecuted in court. The types of criminal sanctions are regulated in Article 10 of the Criminal Code which consists of the principal and additional crimes. The Principal Crimes consist of the death penalty, imprisonment, imprisonment and fines. Meanwhile, additional crimes consist of revoking certain rights, confiscating certain goods, and announcing the judge's decision (Sofian, 2022).

Ultimum remedium is one of the principles contained in Indonesian criminal law. *Ultimum remedium* is one of the principles contained in Indonesian criminal law which says that criminal law should be used as a last resort in law enforcement. The nature of criminal sanctions as the ultimate weapon or *ultimate remedium* when compared to civil sanctions or administrative sanctions has harsh sanctions. As a sanction, criminal sanctions must be placed in the last position instead of the front because of the harsh nature of criminal sanctions, and they have different implications for each person. This is in line with the opinion of Wirjono Prodjodikoro who said that the nature of criminal sanctions as the ultimate weapon or *ultimate remedium* when compared to civil or administrative sanctions. This trait has created a tendency to save money in holding criminal sanctions. So, from here we know that *ultimum remedium* is a term that describes the nature of criminal sanctions (Sofian, 2022).

Sudikno Martokusumo (2007), interpreted that *ultimum remedium* is the last tool. This means that criminal sanctions can be used if other sanctions can no longer provide a deterrent effect for the perpetrator as the last sanction after administrative sanctions and civil sanctions can no longer be taken. This effort is aimed at ensuring that in a sufficient criminal legal process, victims and perpetrators of crimes can obtain justice and legal justice.

In the principle *of ultimum remedium*, it also contains an element of purpose so that the imposition of criminal sanctions can be given to the right person, because the perpetrators of criminal acts also have human rights, including the right to obtain justice, the right to life, and the right to self-improvement. The existence of these human rights is what ultimately gave rise to the principle *of ultimum remedium* in law enforcement. The application of *ultimum remedium* must be interpreted as an effort (middle way) that can benefit all parties, be it as a victim, as a perpetrator or for the benefit of the wider community (Badriyah, 2022).

In addition to being known in criminal law, *Ultimum Remedium* is also known in dispute resolution law. As explained in the article Litigation and Alternative Dispute Resolution Outside the Court, Dr. Frans Hendra Winarta, S.H., M.H. in his book "Dispute Resolution Law" said that conventionally, dispute resolution in the business world, such as in trade, banking, mining projects, oil and gas, energy, infrastructure, and so on is usually carried out through the litigation process. In the litigation process, the parties are placed in opposition to each other, in addition to that, dispute resolution through litigation is considered as *the ultimate remidium* after other alternative dispute resolution does not yield results such as deliberation (Singal, 2021; Sitorus, 2019).

In an article accessed from the Matahati Legal Aid Institute website, it is also explained that in its development, the application of *ultimum remedium* has encountered obstacles because if an act has been considered to be detrimental to the interests of the state and the people, both according to the applicable laws and according to the sociological feelings of the community, then criminal sanctions are the main choice (*premium remedium*). The position *of premium remedium* in the context of punishment is no longer the last medicine but the first medicine to deter people who commit criminal offences (Pramesti, 2015).

It can be said that *premium remedium* is a principle that is the opposite of *ultimum remedium*, where criminal law is enforced as the first choice.

The criminal principles embraced in the KUP Law, especially related to tax crimes regulated in Article 38 and Article 39 paragraph (1) of the KUP Law

Liability for tax crimes is *based on fault* or *culpability*. Taxpayers (WP) must honestly carry out their obligations because if the taxpayer does not, the violating party will be subject to criminal sanctions (Khalimi & SH, 2022).

A. Acts that are included in tax crimes according to Article 38 and Article 39 paragraph (1) of the KUP Law

Tax crimes' provisions, regulated in the KUP Law and other laws, include various forms. Not all tax law violations are included in acts threatened with criminal offences. In an article written by Surya Wulan Dani, published on the official website of the Directorate General of Taxes (Dani, 2024), identified at least 4 (four) elements in tax crimes, namely:

1) Subject. In tax crimes, there must be perpetrators.
2) Action. The act of tax fraud is an act that is contrary to tax law.
3) Result. Criminal acts prohibited by tax law will result in losses to state revenue.
4) Error. The form of the mistake committed as a condition for the imposition of a criminal offence.

Tax law divides the fault based on *the mens rea* or the perpetrator's intention. There are two forms regulated in Article 38 and Article 39 paragraph (1) of the KUP Law, namely in the form of forgetfulness (*culpa*) and intentionality (*dolus*). Provisions related to criminal acts in the field of taxation also regulate the imposition of sanctions. The element of error determines the type and level of sanction. This is because the sanctions imposed in each article will adjust to the form of criminal acts committed.

In a report titled *Fighting Tax Crime - The Ten Global Principles, Second Edition*, *Organization for Economic Co-operation and Development,* OECD (2024) states that each country or jurisdiction can have different approaches *(approaches for tax crime*) in classifying violations as *tax crimes*. For example, a country or jurisdiction can set a

threshold *for* classifying *tax crimes* starting from acts of non-compliance with the act in question, such as deliberately failing to report a Tax Return (SPT) correctly. Other countries or jurisdictions may apply criminal laws starting from a higher threshold. For example, intentional failure to fulfil obligations with aggravating factors, such as repeated violations and falsification of evidence or records.

In addition, there are also countries or jurisdictions that have set very high thresholds to classify *tax crimes*. The threshold, for example, is in the form of organized crime for profit or tax *evasion (tax evasion*) accompanied by aggravating circumstances. Provisions regarding criminal acts in the field of taxation are regulated to create taxpayer compliance. Law *enforcement* is needed in the *self-assessment* tax collection system, namely, taxpayers independently calculate, deposit, and report their outstanding taxes (Redaksi DDTCNews, 2022a).

There is no criminal without guilt. The fundamental principle of this criminal law is a self-translation of *the sentence geen straaf zonder schuld*. This principle began to be known in 1916 through the *Melk en water-arrest* case decided by the Dutch Supreme Court. Based on the case, the criminal act is not only seen from the unlawful act, but there is also an element of guilt in the perpetrator (Redaksi DDTCNews, 2022b).

The four elements in tax crimes in Article 38 and Article 39 paragraph (1) of the KUP Law that the author can identify are as follows:

1) In criminal acts in Article 38 of the KUP Law

a) Subject of Tax Crimes Article 38 of the KUP Law

The tax crime contained in Article 38 of the KUP Law refers to forgetfulness committed by "everyone".

The meaning of "everyone" here must be associated with the next information in letter a: "not submitting the tax return" and letter b: "submitting the tax return, but the content..." so that "everyone" in this article refers to the meaning of Taxpayer (WP) and Taxable Entrepreneur (PKP).

Why does the author include the meaning of "everyone" including PKP? Because the obligation to submit a tax return is not only for the type of Income Tax (PPh) but also for the type of Value Added Tax and Sales Tax on Luxury Goods (VAT and PPnBM), where the obligation to submit the VAT and PPnBM Periodic Tax Return is carried out if the taxpayer has been confirmed as a PKP.

b) Forms of Forgetfulness Tax Crimes (*culpa*)

Article 38 of the KUP Law states that there are 2 types of criminal acts due to forgetfulness. *First* is forgetfulness in the form of not submitting a Notification Letter (SPT). *Second.*, submit a tax return, but the content is incorrect or incomplete, or attach information whose content is incorrect. Article 38 of the KUP Law reads as follows:

"*Everyone who, because of their forgetfulness:*

a. not submitting a Notification Letter; or

b. submit a Notification Letter, but the content is incorrect or incomplete, or attach information whose content is incorrect

...".

The explanation of Article 38 of the KUP Law reads as follows: *Quite clear*.

c) Consequences of the Crime of Taxation of Forgetfulness (culpa)

As a result of tax crimes in Article 38 of the KUP Law, which "*can cause losses to state revenue*".

d) Sanctions for Criminal Acts due to Forgetfulness (*culpa*)

Forgetfulness is considered a lighter form of mistake than intentionality. Therefore, sanctions for tax crimes due to forgetfulness will also be light.

The criminal sanctions in Article 38 of the KUP Law are as follows:

> *"... so that it can cause losses to state revenue, be fined at least 1 (one) time the amount of tax payable that is not or underpaid and a maximum of 2 (two) times the amount of tax payable that is not or underpaid,* ***or*** *be sentenced to imprisonment for a minimum of 3 (three) months or a maximum of 1 (one) year."*

It should be noted that in Article 38 of the KUP Law, both types of sanctions are regulated using the word "or." Thus, the imposition of criminal sanctions of imprisonment can not be applied if the Taxpayer pays the outstanding tax that is not underpaid along with the fine in accordance with the provisions of Article 38 mentioned above.

2) In a criminal act in Article 39, paragraph (1) of the KUP Law

In contrast to forgetfulness, intentionality contains a desire, will, or will. In the context of criminal law, intentionality is the willingness to do or not to commit acts prohibited or ordered by law. Juridically, formally, in the Criminal Code (KUHP), there is no article that provides a limit or definition of intentionality. However, in the Dutch Criminal Code *Memory Van Toelichting*, intentionality is interpreted as wanting and knowing (*willen en wetens*). In the Great Dictionary of the Indonesian Language (KBBI), intentionality is a matter of intentionality. The word is deliberately interpreted as 2 (two). *First*, it was intended; it was intended; it was not by chance. *Second*, contrived and deliberate (KBBI, 2024).

a) Subject of Tax Crimes Article 39 paragraph (1) of the KUP Law

The tax crime contained in Article 39 paragraph (1) of the KUP Law refers to intentionality committed by "everyone".

A more detailed explanation of what is meant by "everyone" other than WP and PKP, as explained in Article 38 of the KUP Law, is also listed in Article 43. In this article, "every person" who can be sentenced in the field of taxation, including representatives, proxies, employees of the taxpayer, as well as or other parties who instruct to commit, who participate in committing, who encourage, or who assists in committing criminal acts in the field of taxation.

b) Forms of Intentional Tax Crimes (*dolus*)

Article 39, paragraph (1) of the KUP Law reads as follows:

"Every person who deliberately:

a. not registering to be given a Taxpayer Identification Number or not reporting their business to be confirmed as a Taxable Entrepreneur;
b. misuse or use without the right of the Taxpayer Identification Number or Inauguration of a Taxable Entrepreneur;
c. Failure to submit a Notification Letter;
d. submit a Notification Letter and/or information whose contents are incorrect or incomplete;
e. refusing to conduct an examination as referred to in Article 29;
f. showing false or falsified bookkeeping, records, or other documents as if they were true, or not describing the true state of affairs;

g. not to conduct bookkeeping or recording in Indonesia, not to show or lend books, records, or other documents;
h. not storing books, records, or documents that are the basis for bookkeeping or recording and other documents, including the results of data processing from bookkeeping that are managed electronically or organized through an online application program in Indonesia as intended in Article 28 paragraph (11); or
i. not to deposit taxes that have been withheld or collected.

…".

The explanation of Article 39, paragraph (1) of the KUP Law reads as follows:

"Acts or actions as referred to in this paragraph that are deliberately carried out are subject to heavy sanctions considering the importance of the role of tax revenue in state revenue. This act or action includes any person who deliberately does not register, abuses or uses without the right of the Taxpayer Identification Number, or abuses or uses without the right to Inauguration of a Taxable Entrepreneur."

There are nine forms of tax crimes in the form of intentionality regulated in Article 39, paragraph (1) of the KUP Law. In accordance with the Explanation of Article 39 paragraph (1) of the KUP Law, acts or actions that are deliberately carried out are subject to severe sanctions considering the importance of the role of tax revenue in state revenue. These acts or actions include any person who deliberately does not register, abuses or uses without the right to a Taxpayer Identification Number (NPWP), or abuses or uses without the right to apply for PKP (Redaksi DDTCNews, 2022c).

1) First, deliberately not registering to be given an NPWP or not reporting their business to be confirmed as a PKP.

Following Article 2 of the KUP Law, every taxpayer who has met the subjective and objective requirements has the obligation to register the NPWP and inaugurate the PKP. Subjective requirements are met if they are under the criteria for tax subjects in the Income Tax Law. Meanwhile, objective requirements are met when tax subjects have income above non-taxable income (PTKP) or are required to withhold or collect taxes.

To be inaugurated as a PKP, based on the Regulation of the Minister of Finance Number 197/PMK.03/2013, entrepreneurs are required to report their business to be inaugurated as a Taxable Entrepreneur no later than the end of the following month if, up to a month in the financial year, the amount of gross circulation and/or gross receipts exceeds Rp4,800,000,000.00 (four billion eight hundred million rupiah).

2) Second, deliberately abusing or using without the right to NPWP or the strengthening of PKP.

One form is if a taxpayer, after being confirmed as a PKP, issues a tax invoice that is not valid or not based on the actual transaction to be sold to other parties.

3) Third, deliberately not submitting a Notification Letter (SPT).

If taxpayers, individuals and entities, deliberately violate the provisions for submitting tax returns regulated in Article 3 of the KUP Law, they will be categorized as committing this tax crime.

4) Fourth, deliberately submitting tax returns and/or information whose contents are incorrect or incomplete.

A correct and complete tax return must comply with the criteria stipulated in Article 3 of the KUP Law.

The following reads a fragment of the Explanation of Article 3 paragraph (1) of the KUP Law:

"... which is meant to be correct, complete, and clear in filling out the Notification Letter is:

a. True is true in calculations. including true in applying the provisions of tax laws and regulations., in writing. and by the actual situation;
b. complete is to contain all elements related to tax objects and other elements that must be reported in the Notification Letter; and
c. clearly is to report the origin, source, and object of the tax and other elements that must be reported in the Notification Letter."

5) Fifth, deliberately refusing to be examined.

Following Article 29 of the KUP Law, the Director General of Taxes is authorized to conduct an audit to test taxpayers' compliance with tax obligations and, for other purposes, to implement the provisions of tax laws and regulations.

6) Sixth, deliberately showing false or forged books, records, or other documents as if they were true or not describing the real situation.

The provisions for implementing bookkeeping and recording are regulated in Article 28 of the KUP Law.

7) Seventh, deliberately not organizing bookkeeping or recording in Indonesia, not showing or not lending books and records. or other documents.

This is flowed in Article 28, paragraph (4) of the KUP Law.

8) Eighth, deliberately not storing books, records, or documents that are the basis for bookkeeping or recording and other documents, including the results of data processing from books managed electronically or organized through an online application program in Indonesia.

Article 28 paragraph (11) of the KUP Law regulates the period of storage of evidence, records, and documents, which is 10 years.

9) Ninth, deliberately not paying taxes that have been deducted or collected.

In the Indonesian tax system, the withholding tax mechanism is known as a scheme to withhold or collect taxes by a third party. The provisions are regulated in Article 20 of the Income Tax Law, such as withholding Income Tax 21, Income Tax 23, Income Tax 26, and Income Tax 22 collection.

c) Consequences of Intentional Tax Crimes (*dolus*)

As explained above, the consequences of tax crimes in Article 39 paragraph (1) of the KUP Law are the same as those in Article 38 of the KUP Law, namely "*can cause losses to state revenue*."

d) Sanctions for Intentional Crimes (*Dolus*)

The sanctions imposed on tax crimes in the form of intentionality in Article 39 of the KUP Law are regulated in 2 (two) forms: criminal sanctions of fines and criminal sanctions of imprisonment.

The criminal sanctions in Article 39 paragraph (1) of the KUP Law are as follows

"... so that it can cause losses to state revenue shall be punished with imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years **and** a fine of at least 2 (two) times the amount of tax payable that is not or underpaid and a maximum of 4 (four) times the amount of tax payable that is not or underpaid."

The same sanctions are imposed for 9 (nine) criminal acts in Article 39 paragraph (1) of the KUP Law because the sanctions in this article use the word "and" so that they apply cumulatively, so fines cannot replace the regulated prison sanctions, and vice versa.

B. The difference in criminal sanctions of imprisonment and imprisonment as mentioned in Article 38 and Article 39 paragraph (1) of the KUP Law

As in the previous discussion, if you look closely, the sanctions imposed for criminal acts in Article 38 and Article 39 paragraph (1) of the KUP Law consist of criminal sanctions of imprisonment (Article 38 of the KUP Law), criminal sanctions of imprisonment (Article 39 paragraph (1) of the KUP Law) and criminal sanctions of fines (Article 38 and Article 39 paragraph (1) of the KUP Law). Article 38 of the KUP Law uses the word "or" in the sanction of the criminal act so that the imposition of criminal sanctions of imprisonment can not be applied if the Taxpayer pays a criminal sanction of a fine (unpaid or underpaid tax along with a fine) per the provisions of Article 38 of the KUP Law but for Article 39 paragraph (1) of the KUP Law uses the word "and" so that it applies cumulatively, So a fine cannot replace the regulated prison penalty, and vice versa.

The difference in criminal sanctions for imprisonment and imprisonment can be found in the Criminal Code (KUHP) before the 2023 amendment. The types of crimes as regulated in Article 10 of the old Criminal Code are still valid today as follows: (Oktavira, 2024)

Crimes consist of:

a) principal crimes:
   1) Death penalty;
   2) imprisonment;
   3) confinement;
   4) criminal fines;
   5) Cover-up Crime.

b) additional criminal offenses:
   1) revocation of certain rights;
   2) Confiscation of certain items;
   3) Announcement of the Judge's Decision.

The difference between confinement and imprisonment in the Criminal Code, S.R. Sianturi (2002, p. 471) explained that the sentence of imprisonment in various cases is determined to be lighter than that determined by the prison sentence. The penalty of imprisonment is at least one day and a maximum of one year. Suppose there is a criminal penalty due to concurrent or repetition or due to the provisions of Article 52 of the Criminal Code. In that case, the penalty of imprisonment can be increased to one year and four months.

Prison sentences consist of imprisonment for life or for a certain period of time. Imprisonment for a certain period of time is a minimum of one day and a maximum of 15 consecutive years. However, it could be that the prison sentence is imposed for 20 consecutive years under the condition of Article 12 paragraph (3) of the Criminal Code. The prison sentence for a certain time must not exceed 20 years.

Meanwhile, Articles 64 to 67 of Law Number 1 of 2023 concerning the Criminal Code (Law 1/2023) concerning the new Criminal Code, which is valid for 3 years from the date of promulgation, namely 2026, divides the types of crimes consisting of principal crimes, additional crimes, and special crimes. Furthermore, Article 65 of Law 1/2023 states:

The main types of criminal penalties consist of:

1) imprisonment;
2) cover-up crimes;
3) criminal supervision;
4) criminal fines; and
5) Social Work Crimes.

Imprisonment is imposed for life or a certain period of time for a maximum of 15 consecutive years or as little as one day unless a special minimum is specified. In the event of certain conditions referred to in Article 68 paragraph (3) of Law 1/2023, the prison sentence can be imposed for 20 consecutive years. A prison sentence for a certain time may not be imposed for more than 20 years. However, the type of confinement that was previously regulated in the Criminal Code is no longer known in Law 1/2023. Article 615 of Law 1/2023 stipulates that the penalty of imprisonment is replaced with a fine when Law 1/2023 has come into effect, with the provision that the penalty of imprisonment of less than 6 months is replaced with a maximum fine of category I, IDR 1 million. imprisonment for 6 months or more is replaced with a maximum fine of category II, IDR 10 million. If the penalty of fines that are threatened alternatively with the imprisonment penalty as mentioned earlier exceeds category II (Rp10 million), the provisions in the said laws and regulations still apply.

C. The criminal principle embraced in the KUP Law as a *remedium* in tax crimes

The imposition of criminal sanctions under Article 38 of the KUP Law is viewed by many as a premium medium, especially after the abolition of Article 13A in the Job Creation Law. Article 13A previously stated that taxpayers who negligently fail to submit a Notification Letter or provide incorrect information would not face criminal sanctions if it were their first offence, provided they paid the owed tax plus a 200% administrative penalty. This provision targeted ignorant taxpayers violating Article 38, which outlines criminal sanctions related to the Notification Letter.

However, removing Article 13A does not imply adherence to the premium remedium principle. Suppose a taxpayer is under investigation for a tax crime without a Tax Determination Letter. In that case, they can voluntarily disclose inaccuracies in their Notification Letter by paying the owed tax and a 100% fine on the underpaid amount. This action prevents further investigation as outlined in Article 8, paragraphs (3) and (3a)

of the KUP Law, which remains unchanged despite recent amendments by the Job Creation Law and Law Number 6 of 2023.

In Article 8, paragraph (3) of the KUP Law, it is stated as follows:

"Even though the preliminary evidence examination has been carried out, the Taxpayer can voluntarily disclose with a written statement regarding the untruthfulness of his actions, namely:

a. Failure to submit a Notification Letter; or
b. submit a Notification Letter that is incorrect or incomplete, or attach incorrect information,

as referred to 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 the investigator of the State Police officer of the Republic of Indonesia".

Moreover, for the disclosure of untruthfulness of the act in Article 8 paragraph (3) of the KUP Law, it is subject to administrative sanctions in the form of a fine of 100% of the amount of underpaid tax in according Article 8 paragraph (3a) of the KUP. Article 8, paragraph (3a) of the KUP reads as follows:

"The disclosure of untruthfulness of the act as referred to in paragraph (3) is accompanied by the repayment of the underpayment of the actual amount of tax owed along with administrative sanctions in the form of a fine of 100% (one hundred per cent) of the amount of underpaid tax".

Not only before the investigation is carried out as stated in Article 8 paragraph (3) of the KUP, but even after the investigation of the KUP Law also adheres to the principle *of ultimum remedium* contained in Article 44B of the KUP Law, the provisions in Article 44B of the KUP Law, stating that:

(1) For the sake of state revenue, at the request of the Minister of Finance, the Attorney General may stop the investigation of criminal acts in the field of taxation within a period of 6 (six) months from the date of the request letter.
(2) The termination of the investigation of criminal acts in the field of taxation as intended in paragraph (1) shall only be carried out after the Taxpayer has paid off the:
    a. losses in state revenue as referred to in Article 38 plus administrative sanctions in the form of fines of 1 (one) time the amount of losses in state revenue;
    b. losses to state revenue as referred to in Article 39 plus administrative sanctions in the form of fines of 3 (three) times the amount of losses to state revenue; or
    c. the amount of tax in the tax invoice, proof of tax collection, proof of tax withholding, and/or proof of tax payment as referred to in Article 39A plus administrative sanctions in the form of a fine of 4 (four) times the amount of tax in the tax invoice, proof of tax collection, proof of tax withholding, and/or proof of tax payment.

The explanation of Article 44B paragraph (1) of the KUP Law states as follows:

"For the sake of state revenue, at the request of the Minister of Finance, the Attorney General can stop the investigation of tax crimes as long as the criminal case has not been delegated to the court".

The explanation of Article 44B paragraph (1) of the KUP Law reveals that the Attorney General's authority to stop the investigation includes stopping the prosecution.

In the explanation of the first and second paragraphs of Article 44B paragraph (2) of the KUP Law, it is stated as follows:

If the investigation process has determined that a suspect is more than 1 (one) person or entity, each suspect also has the right to submit an application for the termination of the investigation himself.

The suspect made the application for the termination of the investigation after paying off the amount of loss to the state revenue; the amount of tax owed that is not or underpaid; the amount of tax in the tax invoice, proof of tax collection, proof of tax withholding, and/or proof of tax payment; The amount of restitution requested and/or compensation or credit of taxes carried out, by the proportion that is the burden plus administrative sanctions in the form of fines.

From Article 44B paragraph (1) of the KUP Law and its explanation, if it is connected to Article 38 and Article 39 paragraph (1) of the KUP Law, it can be interpreted that "for the sake of state revenue at the request of the Minister of Finance, the Attorney General may stop the investigation of tax crimes no later than 6 months from the date of the request letter, 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 1 (one) times the amount of tax that is not or underpaid, or that should not be refunded for losses to state revenue as referred to in Article 38 of the KUP Law and administrative sanctions in the form of fines of 3 (three) times the amount of taxes that are not or underpaid, or that should not be refunded for losses to state revenue as referred to in Article 39 of the KUP Law".

Some considerations for the Minister of Finance to enforce the provision asking the Attorney General to stop the investigation include (Ritonga, 2017):

1) Taxpayers investigated for their crimes admit and accept the auditors' findings related to the criminal act.
2) Promise not to repeat.
3) Given support so that the company's running is not disrupted, there is no termination of employment, and there is good faith to pay taxes as a state obligation for future revenues.

Meanwhile, those who were not approved to stop the investigation were among others considering (Ritonga, 2017):

1) The taxpayer concerned still does not want to admit or accept the mistake of the violation committed.
2) The violations it makes can harm the country's economy.
3) The violation is clearly intentional with bad faith, so a prison penalty is applied for the *deterrent effect* for the person concerned and for other taxpayers.

On April 4, 2024, DGT Director of Counseling, Services, and Public Relations Dwi Astuti said there had been an increase in the number of taxpayers who had applied for the termination of investigations since 2021 (Ritonga, 2016). In 2021, the number of taxpayers who took advantage of *the ultimum remedium* Article 44B of the KUP Law was 10 taxpayers, which increased by 60% to 16 taxpayers in 2022. As for 2023, taxpayers who take advantage of *the ultimum remedium* Article 44B of the KUP Law increased by 50% to as many as 24 taxpayers. At the investigation stage, *ultimum remedium* is implemented in the form of payment of principal tax and administrative sanctions under Article 44B paragraph (2) of the KUP Law of 100% for negligence, 300% for intentionality, and 400% for bupot/proof of deposit/fictitious tax invoice (Kurniati, 2024).

As state administrative law, tax law is in the civil realm and is not subject to PTUN law. Criminal sanctions (imprisonment) for tax violations can be replaced with additional fines on taxes owed, making tax crimes the last resort or *ultimum remedium*. According to A. Anshari Ritonga, the three provisions in the KUP Law that underlie this principle are Article 8 paragraph (3), Article 13A (before being abolished by the Job Creation Law), and Article 44B. With the abolition of Article 13A, Article 8 paragraph (3) and Article 44B are now the main basis for the *ultimum remedium* (Ritonga, 2016).

Based on Abdul Basir's statement (2021, p. 151). The Constitutional Court Decision Number 30/PUU-XXII/2024 confirms that the application of criminal sanctions in Article 39 paragraph (1) letter d of the KUP Law has fulfilled the principle of legal certainty and is in line with the self-assessment system, thus avoiding the application of *premium remedium*. According to Abdul Basir, criminal sanctions for tax crimes should be applied as a last resort after administrative efforts fail to recover state losses. This confirms that the principle of *ultimum remedium* remains the reference in enforcing criminal law in the taxation sector.

Conclusion

In summary, the research findings indicate that the *ultimum remedium* principle in criminal law positions criminal sanctions as a last resort in law enforcement, including in cases of tax crimes. In contrast, the *premium remedium* principle prioritizes criminal penalties for individuals and corporations. The KUP Law (Law Number 6 of 1983), most recently amended by Law Number 6 of 2023, emphasizes the ultimum remedium principle in its criminal provisions, particularly in Article 8 paragraph (3) and Article 44B. Consequently, the KUP Law employs the *ultimum remedium* principle by using criminal law enforcement as a final step after exhausting all administrative and civil measures. This approach allows taxpayers to fulfil their obligations without facing immediate criminal sanctions, promoting fair and proportionate law enforcement.

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