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1 Rethinking Criminal Law Policies in Taxation to Overcome Tax Violations

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1 ABSTRACT

Taxes are the largest source of state revenue for Indonesia's development, but the tax compliance rate of Indonesians is still low. This study aims to analyze issues related to rethinking criminal law policies in taxation to overcome tax violations. This is normative legal research that uses statutory and comparative approaches. The results of the study show that criminal acts in the field of taxation are included in criminal acts in the field of administrative law, which is known to be simple and flexible in law enforcement as long as the purpose of the law is achieved, namely that taxpayers are willing to pay taxes according to their obligations.



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1. Introduction

The financing of national development, especially those that rely on domestic sources, apart from oil and gas, exports of non-oil and gas goods, from the tourism sector, also comes from the taxation sector. The taxation sector plays a vital role in national development. This can be seen from the State Revenue and Expenditure Budget (APBN) from year to year. In 2014/2015 state revenue reached Rp. 1,667.1 trillion. A total of Rp 1,280,4 trillion of this amount came from the taxation sector.¹ Meanwhile, the non-tax sector contributed as much as Rp. 385.4 trillion. The rest comes from receiving grants of Rp. 1.4 trillion. In 2015/2016 the APBN underwent a change, namely state revenues of Rp. 1,635.4 trillion. IDR 1,246.1 trillion came from the taxation sector, IDR 386.9 trillion from non-tax state revenue and IDR 2.3 trillion from grant receipts. Then in the 2016/2017 State Budget, state revenues amounted to Rp. 1,822.5 trillion. Of that income, Rp. 1,546.7

¹Iskandar Simorangkir and Justina Adamanti, 'The Role of Fiscal Stimulus and Monetary Easing in Indonesian Economy During Global Financial Crisis: Financial Computable General Equilibrium Approach', *Buletin Ekonomi Moneter Dan Perbankan*, 13.2 (2010), 165–86 <https://doi.org/10.21098/bemp.v13i2.389>

trillion came from the taxation sector, Rp. 273.8 trillion from non-tax income and Rp. 2.0 trillion from the grant receipt sector.²

In 2020, state revenue is 1,699.9 trillion. A total of 1,404.5 came from tax revenues, 294.1 trillion were non-tax revenues, and 1.3 were grants. In 2021, the state's revenue will be 1,743.6 trillion. 1,444.5 trillion is tax revenue, 298.2 is PNBP, and 0.9 is grants. For 2022, according to Law no. 6 of 2021 concerning the State Revenue and Expenditure Budget for the 2022 Fiscal Year, the State Revenue Budget is planned at Rp.1,846,136,669,813,000 (one quadrillion eight hundred forty-six trillion one hundred thirty-six billion six hundred sixty-nine million eight hundred thirteen thousand rupiah), which comes from tax revenues, Non-Tax State Revenues (PNBP), and grants. Of the APN, Rp. 1,510,001,200,000,000 (one quadrillion five hundred ten trillion one billion two hundred million rupiah) came from the taxation sector, both domestic tax revenues and international trade tax revenues.³

The APBN from the last three years and even previous years shows that the tax sector is dominant in determining Indonesia's development budget. This shows that the tax functions as a *budgetary*, which is a tool or a source to put as much money as possible into the state treasury. In addition to the budgetary function, taxes have another function, namely regulating or non-budgetary, namely taxes can be used as a tool to regulate or implement state policies in the economic and social fields.⁴ With this function, taxes are used as a tool to achieve certain goals that are outside the financial sector and are mostly aimed at the private sector. Some examples of the implementation of the regulating or regulatory function are, first the application of high import duty rates on certain imported goods because these goods can be produced domestically, or conversely the imposition of low export taxes in order to assist the development or protect the industry.⁵ in a country that promotes exports; and second, the application of regulatory functions in the social sector, in order to reduce luxury lifestyles or high consumption patterns. The government imposes a tax on the consumption of luxury goods by imposing a sales tax on luxury goods at a high enough rate so that people who want to live in luxury (by consuming luxury goods) must bear the increasingly high tax burden and will eventually reduce their luxury and return to their lifestyle.⁶

²Salim Darmadi and Robert Czernkowski, 'Are Financial Institutions Tax Aggressive ? Evidence', *Bulletin of Monetary Economics and Banking Volume*, 25.2 (2022) <https://doi.org/10.21098/bemp.v25i2>

³Chandra Utama, Insukindro, and Ardyanto Fitriady, 'Fiscal And Monetary Policy Interactions In Indonesia During Periods Of Economic Turmoil in the US: 2001Q1-2014Q4', *Buletin Ekonomi Moneter Dan Perbankan*, 25.2 (2022), 97–116 <https://doi.org/10.21098/bemp.v25i1.1619>

⁴Milla Sepliana Setyowati and others, 'Strategic Factors in Implementing Blockchain Technology in Indonesia's Value-Added Tax System', *Technology in Society*, 72.November 2022 (2022), 102169 <https://doi.org/10.1016/j.techsoc.2022.102169>

⁵Alexander D. Rothenberg and others, 'Rethinking Indonesia's Informal Sector', *World Development*, 80 (2016), 96–113 <https://doi.org/10.1016/j.worlddev.2015.11.005>

⁶Inma Valeije Álvarez, 'The Prosecution of Fisheries Crime in Spanish Criminal Law: The Impact of European Union Regulations', *Marine Policy*, 147.October 2022 (2023) <https://doi.org/10.1016/j.marpol.2022.105327>

Given the important function of taxes, public awareness of paying taxes is a prerequisite that must be fulfilled if the state wants a tax order. Paying taxes is an obligation for the people or society in order to support the continuity of national development. Development and funding are two things that are mutually binding and cannot be separated from one another. Many developing countries cannot carry out their development smoothly due to lack of funds. Apparently, the strategic role of taxes in development is not fully proportional to the tax compliance of citizens. This is proven by the fact that tax revenue has not been optimal so far. This is indicated by a relatively low tax ratio, which is in the range of 12 percent. This value is still below neighboring countries such as Singapore, Malaysia, the Philippines and Thailand.⁷

The significance of taxes in national development causes the government to run programs that stimulate national tax awareness, such as *tax amnesty*. The main purpose of the *tax amnesty* is so that the funds needed by the state are sufficient, especially related to the State Revenue and Expenditure Budget and taxpayer data can be collected properly, so it is very profitable to monitor future taxpayers. Based on data obtained until the closing of the *tax amnesty* in March 2017, the number of property declarations for Indonesian taxpayers reached IDR 4,865.7 trillion. The value consists of domestic declarations of Rp. 3,686.8 trillion, foreign declarations of Rp. 1,031.7 trillion, and repatriation of Rp. 147.1 trillion. The ransom received reached Rp. 114.2 trillion. The declaration of IDR 4,865.7 trillion, equivalent to 39% of Indonesia's gross domestic product (GDP) and a ransom of IDR 114.2 trillion, equivalent to 0.91% of GDP, is the highest *tax amnesty* in the world.⁸

In practice, there are many cases of tax evasion that have escaped the applicable law, including the tax evasion case that occurred in Solo, the Surakarta District Court acquitted, the Supreme Court with a decision no. 2239 K/PID.SUS/2012 convicted a director of fourteen companies belonging to the Asian Agri Group, while the corporation was not investigated from the start. The Solo District Court acquitted the Defendant, but in MA the defendant was sentenced. Then for the Asian Agri Group case, the Supreme Court did not ensnare corporations as perpetrators of tax crimes, even though in Law no. 28 of 2007 concerning the third amendment to Law no. 6 of 1983 concerning General Provisions and Tax Procedures, it is stated that taxpayers consist of individuals and legal entities or corporations. However, oddly enough, in this law, there are no provisions for criminalizing corporations. Regarding such matters, it is actually possible to follow the guidelines contained in the Criminal Code (Article 103), but the Criminal Code does not regulate corporations or legal entities as subjects of criminal law.⁹

⁷Julie Sherman and others, 'Orangutan Killing and Trade in Indonesia: Wildlife Crime, Enforcement, and Deterrence Patterns', *Biological Conservation*, 276.November 2021 (2022), 109744 <https://doi.org/10.1016/j.biocon.2022.109744>

⁸Annette Alstadsæter and others, 'Tax Evasion and Tax Avoidance', *Journal of Public Economics*, 206 (2022) <https://doi.org/10.1016/j.jpubeco.2021.104587>

⁹Rodrigo Orme and Lynne Oats, 'Implementing Problematic Tax Regulation: Hysteresis and Bureaucratic Revolutionaries within Tax Administrations', *The British Accounting Review*, xxxx, 2022, 101147 <https://doi.org/10.1016/j.bar.2022.101147>

The formulation of criminal sanctions in Law Number 28 of 2007 concerning the General Provisions and Tax Procedures is cumulative, namely imprisonment and fines. The cumulative formula requires law enforcement to give combined sanctions or cannot choose between the two. This sanction cannot be applied to perpetrators of criminal acts in the form of bodies or corporations because perpetrators of corporate or corporate crimes cannot be imprisoned. In the end, because the law is like that, the perpetrators of corporate or corporate crimes will not be ensnared by this criminal sanction.¹⁰

In addition to those described above, in handling tax crimes, it is often found that criminal acts that have met the requirements in the investigation and prosecution, but are not transferred to the court and even terminated on the grounds that the state losses caused by the tax crime have been fulfilled by the taxpayer.¹¹ The Attorney General terminates the investigation at the request of the Minister of Finance in the interest of state revenue. The Attorney General may terminate an investigation no later than 6 (six) months from the request. This provision is regulated in Article 44 B of Law no. 28 of 2007. Seeing such conditions, it seems that the perpetrators of tax crimes are quite privileged by this regulation. Meanwhile, if you look at small cases or other criminal acts that cause small losses, it is difficult to avoid the entanglement of criminal law.¹²

The State financial losses will be very large if such cases are not resolved fairly, while cases that cause small losses are subject to criminal sanctions or are subject to criminal law. Given this, there seems to be a problem with the construction of criminal sanctions in the tax system in Indonesia.¹³ Based on the legal problems above and the significance of taxes on state revenues, this paper will look at the possibility of reconstructing the tax criminal sanctions arrangement in the General Provisions and Procedures for Indonesian Taxation.

2. Research Method

This work employs normative legal research employing a conceptual and case study approach. A conceptual method is utilized to comprehend bureaucracy and corruption monitoring system-related issues.¹⁴ The case technique is used to study and solve problems in real-world circumstances. The proposal is descriptive in nature. Secondary data

¹⁰Maryse Mayer and Yves Gendron, 'The Media Representation of LuxLeaks: A Window onto the Normative Dynamics of Tax Avoidance from a Socio-Legal Perspective', *Critical Perspectives on Accounting*, xxx, 2022, 102480 <https://doi.org/10.1016/j.cpa.2022.102480>

¹¹Chris Jones and others, 'Tax Havens and Emerging Market Multinationals: The Role of Property Rights Protection and Economic Freedom', *Journal of Business Research*, 155.PB (2023), 113373 <https://doi.org/10.1016/j.jbusres.2022.113373>

¹²Hitomi Komatsu and others, 'Gender Norms, Landholdership, and Rural Land Use Fee and Agricultural Income Tax in Ethiopia', *Land Use Policy*, 121.July (2022), 106305 <https://doi.org/10.1016/j.landusepol.2022.106305>

¹³Hidayat Amir, John Asafu-Adjaye, and Tien Ducpham, 'The Impact of the Indonesian Income Tax Reform: A CGE Analysis', *Economic Modelling*, 31.1 (2013), 492–501 <https://doi.org/10.1016/j.econmod.2012.12.018>

¹⁴Taufik Hidayat, Resti Dian, and Suwiat Jenvitichuwong, 'Disharmonization of Supreme Court Regulations in Material Judicial Rights', *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 149–66 <https://doi.org/https://doi.org/10.53955/jhcls.v2i3.34>

generated from literature reviews are the primary data source.¹⁵ Using a qualitative descriptive analysis, the acquired data were examined.¹⁶

3. Results and Discussion

3.1 The Development of Tax Regulations in Indonesia

Taxes for state household shopping have been known since pre-Christian times. History records that China and the Roman Empire had implemented tax collections as a permanent source of income for the state to run the wheels of government. Even since humans lived primitively, taxes have been known by different names and systems.¹⁷ During the Dutch colonial period, under Governor General *Daendels*, the tax collection was known as a *contingent*, and the payment system was in the form of agricultural products.¹⁸ Then during the British colonial period under Stafford Raffles as Lieutenant Governor General (1811-1814), the tax levy was known as the *Landreth* or land tax, as a substitute for the contingent. The basis for this tax levy was that previously the land tilled by the farmer belonged to the King. Therefore, the farmer paid the rent to the King. Furthermore, after the King's submission to England, it is natural that the farmers now pay taxes to England.¹⁹

After Indonesia's independence, the legislation did not simply change or change from colonial products to laws on products of independence, including, in this case, the legislation in the field of taxation still uses the law on colonial products.²⁰ Gradually there were developments in the form of the formation of laws and changes (reductions and additions) to regulations in the taxation of colonial/colonial heritage. The existence of the formation of laws and the changes that occur are adjusted to the state of the Republic of Indonesia, which has become independent.²¹

¹⁵Arsyad Aldyan and Abhishek Negi, 'The Model of Law Enforcement Based on Pancasila Justice', *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 178–90 <https://doi.org/https://doi.org/10.53955/jhcls.v2i3.51>

¹⁶Rian Saputra, M Zaid, and Silaas Oghenemaro, 'The Court Online Content Moderation : A Constitutional Framework', *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 139–48 <https://doi.org/https://doi.org/10.53955/jhcls.v2i3.54>

¹⁷Elena Fernández-Rodríguez, Roberto García-Fernández, and Antonio Martínez-Arias, 'Business and Institutional Determinants of Effective Tax Rate in Emerging Economies', *Economic Modelling*, 94.April 2019 (2021), 692–702 <https://doi.org/10.1016/j.econmod.2020.02.011>

¹⁸Diane Kraal, 'Petroleum Industry Tax Incentives and Energy Policy Implications: A Comparison between Australia, Malaysia, Indonesia and Papua New Guinea', *Energy Policy*, 126.March 2018 (2019), 212–22 <https://doi.org/10.1016/j.enpol.2018.11.011>

¹⁹Sijing Deng, Jiayan Xu, and Yonghui Han, 'A Proprietary Component Manufacturer's Global Supply Chain Design: The Impacts of Tax and Organizational Structure', *Omega*, 115 (2023), 102777 <https://doi.org/10.1016/j.omega.2022.102777>

²⁰Duy Nong, Paul Simshauser, and Duong Binh Nguyen, 'Greenhouse Gas Emissions vs CO2 Emissions: Comparative Analysis of a Global Carbon Tax', *Applied Energy*, 298 (2021), 117223 <https://doi.org/10.1016/j.apenergy.2021.117223>

²¹Dwi Pangestu Ramadhani and Yoonmo Koo, 'Comparative Analysis of Carbon Border Tax Adjustment and Domestic Carbon Tax under General Equilibrium Model: Focusing on the Indonesian Economy', *Journal of Cleaner Production*, 377.December 2021 (2022), 134288 <https://doi.org/10.1016/j.jclepro.2022.134288>

The laws and regulations above became the legal basis for administering taxation in Indonesia until the emergence of MPR Decree No. 11/MPR/1983 concerning Outlines of State Policy, particularly regarding the role of taxation and the importance of new tax law. This MPR Decree aims to increase state revenues, especially from sources other than oil and gas. The realization of these provisions was conveyed in the state address of the President of the Republic of Indonesia in front of the session of the House of Representatives of the Republic of Indonesia on August 16, 1983, which contained the implementation of the fourth *Repelita* starting.²² The government submitted several draft laws on national tax reform to the House of Representatives. On December 31, 1983, Law no. 6 of 1983 concerning General Provisions and Tax Procedures, Law no. 7 of 1983 concerning Income Tax, and Law no. 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods. Shortly after the three laws promulgated on December 27, 1985, two laws were promulgated, namely Law no. 12 of 1985 concerning Land and Building Tax and Law no. 13 of 1985 concerning Stamp Duty. With the enactment of the five tax laws mentioned above, many old tax regulations or laws are no longer valid or revoked.²³

In 1994, the tax law was renewed (second tax reform). This second amendment does not revoke or replace the previous tax laws but only changes several articles of the Taxation Law, which are deemed to contain several weaknesses. The renewal of the Taxation Law includes Law no. 9 of 1994 concerning Amendments to Law no. 6 of 1983 concerning General Provisions and Tax Procedures, Law no. 10 of 1994 concerning Amendments to Law no. 7 of 1983 concerning Income Tax as amended by Law no. 7 of 1991, Law no. 11 of 1994 concerning Amendments to Law no. 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods and Law no. 12 of 1994 concerning Amendments to Law no. 12 of 1985 concerning Land and Building Tax. The four product tax laws of 1994 are different from the product taxation laws of 1983 and 1985, but the basic principles adopted are still the same. The difference is that before using an assessment system, it became a self-assessment system.²⁴

Then in 2000 there was another change with the issuance of Law no. 16 of 2000 concerning the Second Amendment to Law no. 6 of 1983 concerning General Provisions and Tax Procedures. Law No. 17 of 2000 concerning the Third Amendment to Law No. 7 of 1983 concerning Income Tax and Law no. 18 of 2000 concerning the Second Amendment to Law no. 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods. For Law No. 16 of 2000 the amendments only concern

²²Karen Boll, 'Mapping Tax Compliance. Assemblages, Distributed Action and Practices: A New Way of Doing Tax Research', *Critical Perspectives on Accounting*, 25.4-5 (2014), 293-303 <https://doi.org/10.1016/j.cpa.2013.03.002>

²³Matti Ylönen and Matias Laine, 'For Logistical Reasons Only? A Case Study of Tax Planning and Corporate Social Responsibility Reporting', *Critical Perspectives on Accounting*, 33 (2015), 5-23 <https://doi.org/10.1016/j.cpa.2014.12.001>

²⁴Yulian Wihantoro and others, 'Bureaucratic Reform in Post-Asian Crisis Indonesia: The Directorate General of Tax', *Critical Perspectives on Accounting*, 31 (2015), 44-63 <https://doi.org/10.1016/j.cpa.2015.04.002>

administrative matters.²⁵ Regarding the criminal sanctions are the same as those stated in Law no. 9 of 1994 concerning the First Amendment to Law no. 6 of 1983 concerning General Provisions on Tax Procedures. In 2008 there was another change with the enactment of Law no. 28 of 2007 concerning the third amendment to Law no. 6 of 1983 concerning General Provisions and Tax Procedures. Until finally issued again Law no. 16 of 2009 concerning the stipulation of Government Regulation in Lieu of Law no. 5 of 2008 concerning the fourth amendment to Law no. 6 of 1983 concerning General Provisions and Tax Procedures.²⁶

3.2 The Model of Regulation on Tax Sanctions in the United States

The United States has separate federal, state, and local governments, with taxes levied at each level. Taxes are levied on income, payroll, property, sales, capital gains, dividends, imports, estates, gifts, and various fees. In 2010, taxes imposed by the federal, state, and municipal governments amounted to 24.8% of the GDP. Chile and Mexico are countries that tax less as a share of their GDP. However, taxes are much more prominent on labor income than on capital income.²⁷

The different taxes and subsidies for foreign income and expenditure forms can also be indirect taxation of some activities over others. For example, individual spending on higher education can be "taxed" at high levels compared to other forms of personal spending officially recognized as investments. Taxes are levied on the net income of individuals and companies by the federal, most state, and some local governments.²⁸ Citizens and residents are taxed on worldwide income and are allowed a credit for foreign taxes. Income subject to tax is determined under tax accounting rules, not financial accounting principles, and includes most income from any source. Most business expenses are deducted from taxable income, although limits apply to some expenses. Individuals are permitted to deduct taxable income by personal benefits and certain non-business expenses, including home mortgage interest, state and local taxes, charitable contributions, and medical and other costs incurred above a certain percentage of income.²⁹

The state rules for determining taxable income often differ from federal rules. Federal marginal tax rates vary from 10% to 39.6% of taxable income. State and local tax rates

²⁵ Lotta Björklund Larsen, 'Common Sense at the Swedish Tax Agency: Transactional Boundaries That Separate Taxable and Tax-Free Income', *Critical Perspectives on Accounting*, 31 (2015), 75–89 <https://doi.org/10.1016/j.cpa.2015.04.003>

²⁶ Lauri Finér and Matti Ylönen, 'Tax-Driven Wealth Chains: A Multiple Case Study of Tax Avoidance in the Finnish Mining Sector', *Critical Perspectives on Accounting*, 48 (2017), 53–81 <https://doi.org/10.1016/j.cpa.2017.01.002>

²⁷ Merridee L. Bujaki, Stéphanie Gaudet, and Rosa M. Iuliano, 'Governmentality and Identity Construction through 50 Years of Personal Income Tax Returns: The Case of an Immigrant Couple in Canada', *Critical Perspectives on Accounting*, 46 (2017), 54–74 <https://doi.org/10.1016/j.cpa.2017.02.005>

²⁸ Carlene Beth Wynter and Lynne Oats, 'Don't Worry, We Are Not after You! Anancy Culture and Tax Enforcement in Jamaica', *Critical Perspectives on Accounting*, 57 (2018), 56–69 <https://doi.org/10.1016/j.cpa.2018.01.004>

²⁹ Carla Edgley and Kevin Holland, "'Unknown Unknowns' and the Tax Knowledge Gap: Power and the Materiality of Discretionary Tax Disclosures', *Critical Perspectives on Accounting*, 81 (2021), 102227 <https://doi.org/10.1016/j.cpa.2020.102227>

vary widely by jurisdiction, from 0% to 13.30% of income, and many are exempt from taxation. Data for 2022 shows that United States taxes amounted to 249,807 USD. This data has decreased compared to the previous tax year, namely 314,779 billion dollars for 2021. The United States implements a warning when a person commits an intentional or negligent error and fails, despite prior warning notices, to comply with statutory provisions regarding failure to file a tax declaration or fail to comply with certification, information, or reporting obligations, which will be punished by a fine. up to CHF 1.00.33 or the equivalent of 15,340,011.98 rupiahs.³⁰

Furthermore, in the case of tax evasion, the violation is subject to more severe penalties, such as in the case of VAT, so anyone who intentionally or negligently reduces tax bills that can harm the state and does not declare that in a tax period all receipts from goods are exempt from taxation is subject to more severe penalties. Then the tax that is too high is not stated: that all equipment is subject to acquisition tax or declaring costs that are entitled to be deducted by the input tax that is too high—in addition to obtaining an unjustified tax deduction or being subject to a fine not exceeding CHF 400,000.³⁴³¹

In tax enforcement in the United States, tax laws require individuals, corporations, trusts, and estates to determine their tax obligations, file returns, and pay their taxes on a predetermined due date. Taxpayers are expected to complete returns using official forms that the IRS has prepared. It is also undeniable that many tax-payers violate the provisions by not paying taxes. Many acts of non-compliance are subject to criminal and civil tax penalties. However, because criminal prosecution uses more resources, the government more often uses civil sanctions.³²

There are several general categories regarding the provisions for imposing these penalties, namely penalties imposed on taxpayers who fail to take the necessary actions on time, sanctions for inaccurate SPT reporting, penalties for promoting specific regulatory objectives, sanctions imposed on those who assist the taxpayer but will be wrong in submitting the information, and the penalty for failing to provide the required information on time. On the other hand, based on United States tax laws, there are sanctions for those tax payers who fail to file tax returns or pay taxes. IRC 6651(a)(2) imposes a default penalty on taxpayers who fail to pay the amount indicated or required to show as tax on their return. Penalties are imposed at the rate of half a percent (0.5 percent) per month on unpaid balances so long as they remain unpaid, up to a maximum of 25 percent of the amount due.³³

³⁰ F.B. Yenilmez and others, 'Value of Life And Cost of Pre-Mature Deaths With The Perspective Of Productivity As Net Tax Revenue: A Comparison In Usa, Canada, Japan and Australia', *Value in Health*, 17.7 (2014), A423 <https://doi.org/10.1016/j.jval.2014.08.1050>

³¹ Stella Karagianni, Maria Pempetzoglou, and Anastasios Saraidaris, 'Tax Burden Distribution and GDP Growth: Non-Linear Causality Considerations in the USA', *International Review of Economics and Finance*, 21.1 (2012), 186–94 <https://doi.org/10.1016/j.iref.2011.06.002>

³² Jerome Olsen and others, 'Are Consumption Taxes Really Disliked More than Equivalent Costs? Inconclusive Results in the USA and No Effect in the UK', *Journal of Economic Psychology*, 75.February (2019), 102145 <https://doi.org/10.1016/j.joep.2019.02.001>

³³ Edgley and Holland.

3.2 The Legal Sanctions in the Taxation on Indonesia

The highest legal basis for taxation is Article 23A of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which explains that taxes and other levies that are coercive for state needs are regulated by law. From this juridical point of view, taxes contain an element of coercion. This means that if tax obligations are not carried out, there are legal consequences that could result in the imposition of tax sanctions.³⁴ The tax sanctions guarantee that the provisions of tax laws and regulations will be obeyed or complied with. In other words, tax sanctions are a deterrent tool, so taxpayers do not violate tax norms. The application of tax sanctions in a regulation can be ideal in terms of justice for each party if the threat of sanctions is binding on all interested parties.³⁵ According to tax law, any person who intentionally commits an act such as showing false or falsified books, records, or other documents as if they are true or do not describe the actual situation, does not keep books or records in Indonesia, and does not show or lend books or other documents so that it can cause losses to state revenues by not keeping books, records, or other documents that form the basis of bookkeeping or recording is subject to sanctions.³⁶

In Indonesia, there are two sanctions in taxation, which are regulated in Law No. 28 of 2007 concerning General Provisions and Tax Procedures. Two types of sanctions are often imposed: administrative sanctions and criminal sanctions. Administrative sanctions are payments for losses in the form of money to the state. Administrative sanctions are calculated when imposed on taxpayers for a certain period, as stipulated in the tax law.³⁷ There are three types of tax administration sanctions, namely those in the form of fines. Fines are the most common type of sanction found in tax laws. This type of sanction is imposed for income tax (PPH), value-added tax (PPn), and luxury goods sales tax (PPnBM), which are regulated in Article 7, paragraph 1, of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 2007. 1983 concerning General Provisions and Tax Procedures (UU KUP). The sanctions are determined, including the extension period for submitting notification letters for PPN period notifications of Rp. 500,000, other period notices of Rp. 100,000, corporate taxpayer annual income tax returns of Rp. 1,000,000, and individual taxpayer annual income tax returns of Rp. 100,000.³⁸

The administrative sanctions in the form of interest are imposed for violations that result in a more significant tax debt. Sanctions in the form of interest consist of interest on the

³⁴Josep M^a Argilés-Bosch, Diego Ravenda, and Josep Garcia-Blandón, 'E-Commerce and Labour Tax Avoidance', *Critical Perspectives on Accounting*, 81 (2021), 102202 <https://doi.org/10.1016/j.cpa.2020.102202>

³⁵Amanda Young, Kieran James, and Abeer Hassan, 'The Role of Regressive Sugar Tax in the Soft Drink Industry Levy (SDIL): A Marxist Analysis', *Critical Perspectives on Accounting*, 88 (2022), 102326 <https://doi.org/10.1016/j.cpa.2021.102326>

³⁶Santtu Raitasuo, 'The Conflict of Interest in Tax Scholarship', *Critical Perspectives on Accounting*, April 2019, 2021, 102394 <https://doi.org/10.1016/j.cpa.2021.102394>

³⁷Jane Andrew and others, 'Wealth Taxes and the Post-COVID Future of the State', *Critical Perspectives on Accounting*, May 2021, 2022, 102431 <https://doi.org/10.1016/j.cpa.2022.102431>

³⁸Dennis De Widt and Lynne Oats, 'Imagining Cooperative Tax Regulation: Common Origins, Divergent Paths', *Critical Perspectives on Accounting*, xxx, 2022, 102446 <https://doi.org/10.1016/j.cpa.2022.102446>

payment, interest on the collection, and interest on the determination. Interest payments arise due to late tax payments.³⁹ Collection interest arises from the payment of taxes billed on bills in the form of Tax Collection Letters (STP) and Underpaid Tax Assessment Letters (SKPKB). Statutory interest is interest that is included in the STP in addition to the tax principal. The amount of interest granted is usually between 2 and 48%. The 2% interest penalty is contained in Article 8, paragraph 2, Article 9, paragraph 2a, Article 13, paragraphs 1a and 1b, Article 14, paragraphs 1a and 1b, and Article 19, paragraphs 1-3, of the KUP Law. The 48% interest sanction amount is contained in Article 13, paragraph 5, and Article 15, paragraph 4 of the KUP Law.⁴⁰ Sanctions in the form of tax increases are aimed at taxpayers who do not pay the amount of tax owed in full. Article 13, paragraph 3, of the KUP Law contains sanctions in the form of increased taxes imposed on taxpayers who do not pay off the amount of PPh, PPhn, and PPhnBM payable in the underpaid tax assessment letter. In addition, there is the application of criminal sanctions because of violations and crimes that cause state losses. Violations are called "negligence," which is unintentional, negligent, careless, or ignoring tax obligations. Meanwhile, a crime is the act of deliberately ignoring tax obligations.⁴¹

The provisions regarding criminal sanctions on taxation are regulated in Chapter VIII of the KUP Law as a formal tax law. These criminal sanctions can be imposed on taxpayers, tax officers (*fiskus*), and third parties. The application of criminal sanctions in the field of taxation is *ultimum remedium*, meaning that criminal sanctions will only be applied if other efforts have been made but have had no effect. In other words, they have not had a deterrent effect on either the perpetrators or potential perpetrators.⁴²

The criminal acts in taxation cannot be prosecuted after ten years have passed. This period is calculated from the time the tax is due, the end of the tax period, the end of part of the tax year, or the end of the relevant tax year. The determination of the ten years is adjusted to the expiration date of keeping the tax documents used as the basis for calculating the amount of tax payable, which is ten years.⁴³ The mechanism for applying criminal sanctions in the tax courts includes tax audit stages, objections, appeals, the evidence before the assembly, and decisions of the Tax Advisory Council. At the audit stage, the taxpayer is entrusted with calculating the tax owed and depositing it in the state treasury. This stage aims to collect materials that will be used as the basis for issuing Tax

³⁹Ain Hajawiyah and others, 'Analysis of a Tax Amnesty's Effectiveness in Indonesia', *Journal of International Accounting, Auditing and Taxation*, 44 (2021) <https://doi.org/10.1016/j.intaccudtax.2021.100415>

⁴⁰Sri Suhartini and others, 'Biorefining of Oil Palm Empty Fruit Bunches for Bioethanol and Xylitol Production in Indonesia: A Review', *Renewable and Sustainable Energy Reviews*, 154, December 2020 (2022), 111817 <https://doi.org/10.1016/j.rser.2021.111817>

⁴¹Mairon G. Bastos Lima, 'Just Transition towards a Bioeconomy: Four Dimensions in Brazil, India and Indonesia', *Forest Policy and Economics*, 136, January (2022), 102684 <https://doi.org/10.1016/j.forpol.2021.102684>

⁴²Djoko Santoso Abi Suroso and others, 'Revisiting the Role of International Climate Finance (ICF) towards Achieving the Nationally Determined Contribution (NDC) Target: A Case Study of the Indonesian Energy Sector', *Environmental Science and Policy*, 131 (2022), 188–95 <https://doi.org/10.1016/j.envsci.2022.01.022>

⁴³Roxana-Elena Lazăr, 'Tax Evasion between Legality and Criminal Offense', *Procedia - Social and Behavioral Sciences*, 92, Lumen (2013), 462–66 <https://doi.org/10.1016/j.sbspro.2013.08.702>

Assessment Letters, Additional Tax Assessment Letters, Tax Returns, Tax Overpayment Decision Letters, and others related to tax administration.⁴⁴

An objection from the taxpayer to a tax assessment is a guarantee for the taxpayer to exercise his rights guaranteed by law. For taxpayers who feel they have not received fair treatment because their objection letter was rejected in part or whole by the tax authorities, taxpayers, within three months, can submit an appeal to the Tax Advisory Council after receiving a decision letter of refusal.⁴⁵ An appeal must be submitted as a written letter to the Secretary of the Assembly. Taxpayers who could improve at writing can apply orally to the Regional Head, who, for this purpose, will be ordered to make a written letter signed by him and forwarded to the Secretary of the Assembly. The letter of request for an appeal must be affixed with stamp duty.⁴⁶

In the pre-assessment proof stage, if the taxpayer who files an objection feels that he has fulfilled his obligation to submit a tax return (SPT), the tax authorities must prove that the tax assessment is correct. Meanwhile, if the taxpayer submits an objection and is deemed not to have fulfilled his obligations in submitting the SPT, the taxpayer must prove that the tax assessment is incorrect.⁴⁷ Evidence that can be used at this stage is documentary evidence, witness evidence, presumptions, confessions, and oaths. In addition, two other pieces of evidence can also be used, namely expert judgment and judge knowledge. Before deciding on a dispute, the Tax Advisory Council has the right to request information from experts, interpreters, and employees appointed by the Head of the Tax Inspectorate. They must take an oath before carrying out their duties.⁴⁸ The decision of the Tax Advisory Council on the taxpayer's appeal can be in the form of a statement not accepting the appeal because it does not meet the formal requirements (for example, an appeal is filed after the expiration of the time specified in the law), stating that the Panel is not authorized to make a decision, rejecting the appeal, accepting some of the appeal letter, or accepting the appeal letter in its entirety.⁴⁹

There are two legal systems in tax law enforcement: administrative law and criminal law. The scope of administrative law is known as administrative law enforcement, which is part of a government authority. *Administrative law enforcement* is a procedure that must be

⁴⁴Nuraini Sari, Maya Safira Dewi, and Yen Sun, 'Indonesia: The Effect of Tax Holiday on Economic Growth Related to Foreign Investment', *Procedia - Social and Behavioral Sciences*, 211 (2015), 1008–15 <https://doi.org/10.1016/j.sbspro.2015.11.134>

⁴⁵Yoga Pamungkas and others, 'Evaluation of Interoperability Maturity Level: Case Study Indonesian Directorate General of Tax', *Procedia Computer Science*, 157 (2019), 543–51 <https://doi.org/10.1016/j.procs.2019.09.012>

⁴⁶Noor Romy Rahwani and others, 'XBRL Based Corporate Tax Filing in Indonesia', *Procedia Computer Science*, 161 (2019), 133–41 <https://doi.org/10.1016/j.procs.2019.11.108>

⁴⁷Haula Rosdiana, Inayati, and Machfud Sidik, 'Indonesia Property Tax Policy on Oil and Gas Upstream Business Activities to Promote National Energy Security: Quo Vadis', *Procedia Environmental Sciences*, 28.SustainN 2014 (2015), 341–51 <https://doi.org/10.1016/j.proenv.2015.07.043>

⁴⁸Clark C. Matheos and others, 'Cost-Effectiveness Analysis of Tobacco Control Strategies in Indonesia', *Value in Health Regional Issues*, 33.1 (2023), 65–75 <https://doi.org/10.1016/j.vhri.2022.08.013>

⁴⁹Amrie Firmansyah and others, 'Political Connections, Investment Opportunity Sets, Tax Avoidance: Does Corporate Social Responsibility Disclosure in Indonesia Have a Role?', *Heliyon*, 8.8 (2022) <https://doi.org/10.1016/j.heliyon.2022.e10155>

passed first in the tax law enforcement process before using criminal law instruments.⁵⁰ The criminal provisions of the Tax Law regulate the role of criminal law in the tax sector. Criminal law enforcement can be imposed on taxpayers, tax bearers, third parties, and tax authorities (parties who collect taxes). Criminal law enforcement also reaches the tax authorities because of the tendency of the tax authorities to also commit criminal acts, as in cases that have occurred until 2019.⁵¹ The first case that emerged to the public was a tax corruption case with the defendant Gayus Tambunan. This case has significantly affected the public, causing them to be reluctant to pay taxes. Until 2018, several cases of corruption were still revealed, which also resulted in a decrease in public trust in the Directorate General of Taxes, Ministry of Finance.⁵²

The specifications for criminal acts in the field of taxation are described in the first place: criminal acts of corruption related to criminal acts in the field of taxation regarding state finances that have been paid by taxpayers and have come out of the inventory of the taxpayer concerned but have not entered into the treasury or inventory list of state finances due to abuse by taxpayers, both private persons and officials at corporations, or by unscrupulous officials at the tax office, which results in tax payments from taxpayers not being paid in part or whole to the treasury or state inventory due to the Second, the crime of money laundering is related to the criminal act of taxation, which is different from the criminal act of corruption and general criminal acts. Taxation by taxpayers or corporations, officers or officials of the Directorate General of Taxes, and third parties who are not taxpayers and are not tax officials.⁵³

Third, regulating the relationship between criminal acts in the field of taxation and general criminal acts or unique criminal acts. Regarding the authority to carry out investigations between criminal acts in the field of taxation, which are administrative with general crimes and particular crimes which are pure crimes (generic crimes).⁵⁴ Suppose a crime in the taxation field uses general or special criminal law. In that case, it will conflict with the style of criminal tax law, which is included in administrative, criminal law, regarding the legal basis for the imposition of criminal sanctions, namely administrative, criminal acts in the field of taxation originating from the Tax Law, including administrative law and criminal sanctions in the field of administrative law (dependent crimes).⁵⁵ In contrast, general and special criminal acts are regulated in laws that regulate

⁵⁰Wangga, M. S. E., Tawang, D. A. D., Sabirin, A., & Esquivel, A. H. (2022). Criminal Liability of Political Parties from the Perspective of Anti-Money Laundering Act. *JILS (Journal of Indonesian Legal Studies)*, 7(1), 229-264. <https://doi.org/10.15294/jils.v7i1.54534>

⁵¹Tri Sulistiyono and others, 'Government Accountability Model for the Protection of Indonesian Migrant Workers in China', *Lex Scientia Law Review*, 6.1 (2022), 93-120 <https://doi.org/10.15294/lesrev.v6i1.55112>

⁵²Putu Gede Arya Sumerta Yasa and others, 'Automatic Exchange of Information (AEOI) for Indonesian Tax Purposes: Economic Analysis of Law Approach', *Lex Scientia Law Review*, 6.1 (2022), 157-86 <https://doi.org/10.15294/lesrev.v6i1.55143>

⁵³Andrew William and others, 'Third-Party Risk in the Availability Payment: The Palapa Ring Western Package', *Journal of Indonesian Legal Studies*, 7.1 (2022), 339-90 <https://doi.org/https://doi.org/10.15294/jils.v7i1.55184>.

⁵⁴Faizal Kurniawan and others, 'The Principle of Balance Formulation as the Basis for Cancellation of Agreement in Indonesia', *Lex Scientia Law Review*, 6.1 (2022), 121-56 <https://doi.org/10.15294/lesrev.v6i1.55468>

⁵⁵Awaludin Marwan and Fiammetta Bonfigli, 'Detection of Digital Law Issues and Implication for Good Governance Policy in Indonesia', *Bestuur*, 10.1 (2022), 22-32 <https://doi.org/https://doi.org/10.20961/bestuur.v10i1.59143>

general and special criminal law with the style of independent crimes. Through this style of taxation law, the alleged occurrence of a tax crime can be resolved through an administrative mechanism, namely by paying the outstanding tax obligations, and the fines can be used as a reason not to proceed with the criminal case. Taxpayers carry out violators who commit criminal acts in the field of taxation, officers/officials at the Directorate General of Taxes, or third parties.⁵⁶ In contrast, investigations into alleged criminal acts in the field of taxation can only be carried out by certain civil servant officials within the Directorate General of Taxes who are given the authority, particularly as investigators. Since the start of the investigation, notify and convey the investigation results to the public prosecutor through investigators from the Indonesian National Police.⁵⁷

The criminal law enforcement supported by the criminal justice system is supported in 4 (four) functions, namely, the function of making laws, the function of law enforcement as a solution for social order, the function of trial examination to determine the guilt of the accused, and the imposition of sentences or criminal sanctions and the function of rehabilitation the convict which includes correctional activities, related social services, and mental health institutions to recover the convict's condition to every day and productive life.⁵⁸

3.3 Implementation of Tax Criminal Sanctions in Indonesia

In the period 2009-2021, data indicated that criminal acts or crimes in the field of taxation were recorded at the Directorate General of Taxes were dominated by cases of fictitious tax invoices and treasurers. The biggest perpetrators are corporate or corporate taxpayers, which are 68 cases, treasurer taxpayers are 14 cases and personal taxpayers are 10 people. When compared to several previous years, the largest tax crime committed was the crime of value added tax refunds (VAT refunds). In the 2009 to 2021 period, quite a number of people indicated that they had committed criminal acts in the field of taxation by entities or entrepreneurs to manipulate taxes. Of these cases, some were resolved out of court (administrative sanctions) meaning that they were resolved by the Directorate General of Taxes and some were resolved through court (criminal sanctions).⁵⁹

It is possible that the taxpayer can still be fostered (able to pay the tax debt and fines and to maintain the good name of the taxpayer) then the case will be settled out of court (Directorate General of Taxes). However, if it is difficult to develop or to resolve out of court, then the case is settled through the court. This can be seen from the existing data in the period 2009 to 2012 that there are 92 (ninety-two) cases of tax crimes that have entered the prosecution stage. Of the number of cases, 69 (sixty nine) cases have been decided by

⁵⁶U.W. Prakasa, Satria, 'Reduce Corruption in Public Procurement: The Effort Towards Good Governance', *Bestuur*, 10.1 (2022), 33–42 <https://doi.org/https://doi.org/10.20961/bestuur.v10i1.51339>

⁵⁷Zainal Arifin Mochtar and Kardiansyah Afkar, 'President's Power, Transition, and Good Governance', *Bestuur*, 10.1 (2022), 68–83 <https://doi.org/https://dx.doi.org/10.20961/bestuur.v10i1.59098>

⁵⁸Dewi Nurul Savitri, 'Legal Policy on the Protection of the Right to Health during the Covid-19 Pandemic in France', *Bestuur*, 10.1 (2022), 1–11 <https://doi.org/https://doi.org/10.20961/bestuur.v10i1.54449>

⁵⁹Sahminan Sahminan and others, 'A Dynamic Stochastic General Equilibrium (Dsge) Model To Assess the Impact of Structural Reforms on the Indonesian Economy', *Buletin Ekonomi Moneter Dan Perbankan*, 20.2 (2017), 149–80 <https://doi.org/10.21098/bemp.v20i2.810>

the court with a sentence of imprisonment and a fine of almost 4.3 (four point three) trillion.⁶⁰

To find out that taxpayers fulfill their tax obligations, the first step taken by the Directorate General of Taxes is to conduct an audit. According to the tax law, audit is a series of activities to seek, collect, and process data and/or other information in the context of supervising compliance with the fulfillment of tax obligations under the provisions of tax laws. It is clear that the act of tax audit is to test compliance with the fulfillment of tax obligations and for other purposes in order to implement the provisions of tax legislation. One type of tax audit for other purposes is a tax audit in the context of seeking preliminary evidence regarding an alleged criminal act in the taxation sector. Initial evidence itself includes conditions and/or evidence in the form of statements, writings, actions or objects that can provide an indication that a criminal act is being or has occurred committed by a taxpayer that can cause losses to the state. The examination there is a strong suspicion that a crime in the field of taxation has occurred, the tax audit report shall state the acts, evidence of such acts and the amount of state loss, in the form of the amount of underpaid tax from each type of tax.⁶¹

However, it should be stated that before the preliminary evidence examination is carried out, it is necessary to carry out supporting activities. The supporting activity is by carrying out observation actions, namely to match the facts, discuss and further develop information, data, reports and/or complaints containing indications of allegations of criminal acts in the taxation sector. If the examiner finds that a crime in the taxation sector has occurred, then the investigation can be continued. Investigations into criminal offenses in the taxation sector are carried out by civil servants within the Directorate General of Taxes.⁶² Furthermore, tax investigation activities are carried out based on the instructions of the Director General of Taxes, in the form of an investigation order signed by the Directorate General of Taxes or the appointed Head of the Regional Office of the Directorate General of Taxes. In the implementation instructions, the preparation of the case file by the tax investigator consists of making an official report, opinion/resume, compiling the contents of the file and filing. The case file is then handed over to the public prosecutor through the police investigator.⁶³

In tax cases, it is rarely processed until the investigation stage, let alone until the process in court. From the results of the examination, there are allegations of criminal acts in the field of taxation. The Director General of Taxes has the authority not to conduct investigations and only apply administrative sanctions. If administrative sanctions are

⁶⁰Dinci J. Penzin, Afees Salisu, and Benedict N. Akanegbu, 'Note On Public Debt-Private Investment Nexus In Emerging Economies', *Buletin Ekonomi Moneter Dan Perbankan*, 25.2 (2022), 25–35 <https://doi.org/10.21098/bemp.v25i1.1988>

⁶¹Darmadi and Czernkowski.

⁶²Susan Sunila Sharma, 'Determinants Of Indonesia ' S Income Velocity Of Money', *Bulletin of Monetary Economics and Banking Volume*, 21.3 (2019) <https://doi.org/10.21098/bemp.v21i3>

⁶³Badri Narayan Rath and Poulomi Bhattacharya, 'Does Innovation Outcomes Influence Performance of Indian Manufacturing Firms?', *Buletin Ekonomi Moneter Dan Perbankan*, 25.0 (2022), 85–102 <https://doi.org/10.21098/bemp.v25i0.1824>

applied, then the settlement is successively the Director General of Taxes issues a tax assessment letter (SKP) which must be paid by the taxpayer within one month of issuance (article 9 paragraph (3) of Law No. 28 of 2007). If the taxpayer does not pay until maturity, a tax invoice is issued and the application of a tax bill with a forced letter is issued. The implementation of this tax bill with a forced letter follows Law no. 19 of 2000 concerning amendments to Law Number 19 of 1997 concerning tax collection by force letter. In the tax law, it is not specified or there are no certain guidelines or parameters for reference for PPNS of the Directorate General of Taxes in determining when and what forms of violations or criminal acts in the field of taxation can or cannot be continued to the investigation stage or only sufficient until the examination stage only, so that the settlement is administratively (out of court).⁶⁴

In practice, as the author described above, the guidelines in determining a violation or criminal act are only up to the examination level or until the investigation stage "can be fostered or not". If it can be fostered, it means being able to pay the tax debt and the fine, then the violation or criminal act does not need an investigation, just an examination. On the other hand, if it cannot be fostered, then the examination will be continued until the investigation stage. In the absence of guidelines or parameters in the tax law and in practice such guidelines, it is possible to produce policies that are biased, discriminatory and without legal certainty. In addition, it is still possible for criminal acts in the taxation sector that have been investigated to be dismissed, this is stated in Article 44B of Law no. 28 of 2007 in conjunction with Law no. 16 of 2009 which states that in the interest of state revenue, the Attorney General may stop the investigation of criminal acts in the field of taxation at the request of the Minister of Finance, but the termination of this investigation if the taxpayer has paid off taxes that are not or underpaid or that should not be returned, plus a fine of Rp. 4 (four) times the amount of tax not paid or underpaid. From this provision, it can be seen that "state revenue orientation" is the most prioritized policy in this taxation sector. This orientation is so strong that the handling of criminal acts in the taxation sector, which should be resolved through a court process, can be resolved by an approach to receiving the payment of tax debts and their fines (administrative).⁶⁵

Most of the tax violations/crimes tend to be resolved using administrative sanctions. Indeed, the choice of giving administrative sanctions has its advantages, namely that tax money can immediately enter the state treasury and the amount is as desired. With the policy of the Director General of Taxes that tends to settle criminal acts in the taxation sector by administrative means, the provisions of criminal sanctions regulated in the tax law do not function or are not functioning. In fact, if the provisions of criminal sanctions are applied or functioned against criminal acts in the taxation sector, they will have effect a fairly good (special prevention) and potential perpetrators (general prevention), so that

⁶⁴Budi Trisnanto. Directorate of Economic Research and Monetary Policy Ndari Surjaningsih, G. A. Diah Utari, 'Finance And Endogenous Growth', *Buletin Ekonomi Moneter Dan Perbankan*, 13.4 (2011), 353–470 <https://doi.org/10.21098/bemp.v25i1>

⁶⁵Utama, Insukindro, and Fitriady.

deviations or violations will decrease and This results in greater tax revenues entering the state treasury.⁶⁶

The starting from the description above, it is clear that the tax law has provided a considerable opportunity for the Directorate General of Taxes in resolving a case or criminal offense in the taxation sector by administrative means, namely paying tax debts and fines. This payment is considered to have covered state losses, so the provisions for criminal sanctions do not need to be used. Cases of criminal acts in the field of taxation that have been delegated to the court it turns out that most or almost all of them, the prosecutor as the public prosecutor bases his indictment on individuals or individuals as perpetrators, not on entities or corporations as the perpetrators. Likewise, the decisions of the District Courts, the High Courts to the Supreme Court also decide or punish individuals or individuals as perpetrators of tax crimes. Even though it has been recognized in Law 28 of 2007 jo Law no. 16 of 2009 concerning Stipulation of Government Regulation in Lieu of Law no. 5 of 2008 concerning the fourth amendment to Law no. 6 of 1983 concerning General Provisions and Tax Procedures that taxpayers or tax legal subjects are individuals or entities (corporations). Under such circumstances, the criminal provisions contained in the tax law are not fully functional, for example in Supreme Court Decision No. 1933 K/PID.SUS/2015 which ensnared Vinna Sencahero.⁶⁷

The Supreme Court's decision above, it is clear that in prosecuting the criminal acts committed by Vinna Sencahero, the HO carried out by the Public Prosecutor is incomplete, the claim should not only be directed at Vinna Sencahero, HO personally but the demands are also directed to the CV body or corporation. The Earth Archipelago Award was done because Vinna Sencahero's brother, HO was the director of the company and he acted on behalf of the company. In this case the Prosecutor as the Public Prosecutor filed two indictments, namely the first as the Public Prosecutor demanding that the Defendant be sentenced to imprisonment and a fine for violating Article 39 paragraph (1) letter a of Law no. 6 of 1983 concerning General Provisions and Tax Procedures as amended by Law no. 16 of 2000. Second, the Prosecutor as Public Prosecutor demanded that the Defendant be sentenced to imprisonment and a fine for violating Article 39 paragraph (1) letter c of Law no. 6 of 1983 as amended by Law Number 16 of 2000. In the trial at the Surabaya District Court, all the demands of the Prosecutor were dismissed by the Panel of Judges on the grounds that the Defendant was not guilty of committing a tax crime, therefore the Defendant was acquitted.⁶⁸

The decision at the Surabaya District Court to acquit the Defendant, the Prosecutor as the Public Prosecutor filed an cassation to the Supreme Court. By the Supreme Court, the

⁶⁶Zi Wen Vivien Wong and others, 'The Effects of Rent Seeking Activities on Economic Growth in Middle-Income Countries', *Buletin Ekonomi Moneter Dan Perbankan*, 25.2 (2022), 215–36 <https://doi.org/10.21098/bemp.v25i2.1863>

⁶⁷Ndari Surjaningsih, G. A. Diah Utari, and Budi Trisnanto, 'The Impact of Fiscal Policy on the Output and Inflation', *Buletin Ekonomi Moneter Dan Perbankan*, 14.4 (2012), 367–96 <https://doi.org/10.21098/bemp.v14i4.409>

⁶⁸Universitas Negeri Medan and others, 'The Impact Of Fiscal Policy Toward Economic', *Bulletin of Monetary Economics and Banking*, 12.4 (2010) <https://doi.org/10.21098/bemp.v12i4>

appeal filed by the Prosecutor as the Public Prosecutor was granted. Furthermore, the Supreme Court adjudicated itself with a commendation stating that the Defendant has been legally and convincingly proven guilty of a criminal act of "submitting a Notification Letter and/or information whose contents are incorrect or incomplete on an ongoing basis" (in violation of Article 39 paragraph (1) letter c of Law No. Law No. 6 of 1983 concerning General Provisions and Tax Procedures as amended by Law No. 16 of 2000). For violating these provisions, the Supreme Court sentenced the Defendant Vinna Sencahero to imprisonment for 1 (one) year and a fine of 2 (two) times the amount of restitution requested, namely Rp. 3,033,911,520.00 (three billion thirty three million nine one hundred eleven thousand five hundred and twenty rupiahs) provided that if the fine is not paid, it is replaced with imprisonment for 6 (six) months.⁶⁹

The Supreme Court's decision, it shows that the perpetrators of corporate or corporate taxpayers are not touched at all, both from the demands of the Prosecutor as a Public Prosecutor and from the Supreme Court's decision. In fact, if you look at the law, entities or corporations are also taxpayers. This confirms that law enforcement has not paid attention to the sense of justice among taxpayers. If you look at the loss of state revenue, the decision of the Supreme Court will also not be able to restore the losses suffered by the state. This happens because in the criminal penalty decision there is a clause that says if the fine is not paid, it will be replaced with imprisonment for 6 (six) months. The same thing is also found in the Supreme Court Decision No. 2806 K/PID.SUS/2015 which ensnared Lin Handy Kiatarto. From the decision above, it is clear that from the beginning the defendant was an individual, while a body or corporation was not a party that could be made a defendant, both from the demands of the Prosecutor as a Public Prosecutor and decisions from the Panel of Judges of the District Court, High Court and from the Supreme Court. In fact, when viewed from the position of the defendant is as Director of CV. Tira Persada. And besides that, in committing this crime it also involves a company or corporation from CV. Tira Persada. Because they are not involved in this case, the agency or corporation is not involved in tax law enforcement.⁷⁰

The Supreme Court's decision in this case does not grant the prosecutor's claim as a public prosecutor and rejects the cassation of the prosecutor's application as a public prosecutor. The Supreme Court revised the decision of the Yogyakarta High Court which upheld the decision of the Sleman District Court where the decision stated that the defendant Lin Handy Kiatarto had been legally and convincingly proven guilty of committing a tax crime continuously and was sentenced to prison for 1 (one) year probationary period of 2 (two) years and a fine of Rp. 468,503,260.00 (four hundred and sixty eight million five hundred three thousand two hundred and sixty rupiah) provided that if the fine is not paid, it will be replaced with imprisonment for 5 (five) months. This decision from the Supreme Court is a light decision because the sentence for imprisonment

⁶⁹Mita Nezky, 'The Impact of US Crisis on Trade and Stock Market in Indonesia', *Buletin Ekonomi Moneter Dan Perbankan*, 15.3 (2013), 83-96 <https://doi.org/10.21098/bemp.v15i3.428>

⁷⁰Ibrahim Ibrahim and others, 'The Regional Impact Transmission via International Trade: An ASIAN-IO Approach The Regional Impact Transmission via International Trade: An ASIAN-IO Approach', *Bulletin of Monetary Economics and Banking*, 16.4 (2014) <https://doi.org/10.21098/bemp.v16i4>

is only a probationary sentence, while the penalty for fines is substituted if they cannot pay. Another case that has similarities is the Supreme Court Decision *No. 2239 K/PID.SUS/2012*. Suwir Sea aka Liu Che Sui aka Atak. Suwir Laut was accused of committing several acts, even though each of them was a crime or a related violation so that it must be viewed as one continuous act.⁷¹

Taxpayer's representative, proxy, or employee, who orders to commit, participates in committing, recommends, or assists in committing a crime in the taxation sector, intentionally submits a tax return and/or information whose contents are incorrect or incomplete so as to result in loss in state revenue. From his actions, he was threatened or prosecuted by the prosecutor as a public prosecutor, with imprisonment for 3 (three) years and a fine of Rp. 5,000,000,000.00 (five billion rupiah) subsidiary to imprisonment for 6 (six) months.⁷² The Central Jakarta District Court in its decision granted Prematur's exception from the Lawyer and did not accept the indictment from the Prosecutor as a Public Prosecutor. Then the decision from the Jakarta High Court strengthened the decision from the Central Jakarta District Court. Furthermore, from this case, the Supreme Court sentenced the defendant Suwir Laut to prison for 2 (two) years with a probationary period of 3 (three) years and gave the Asian Agri Group company a fine of Rp. 2,519,955,391,304.00. (two trillion five hundred nineteen billion nine hundred fifty five million three hundred ninety one thousand three hundred and four rupiah) in cash.⁷³ This decision is quite strange because the agency or corporation from the beginning was never prosecuted by the Prosecutor as a Public Prosecutor, but the Supreme Court's decision instead gave a criminal penalty of Rp. 2,519,955,391,304.00 (two trillion five hundred nineteen billion nine hundred fifty five million three hundred ninety one thousand three hundred four rupiah).⁷⁴

4. Conclusion

Based on the explanation above, it can be concluded that criminal acts in the field of taxation are included in criminal acts in the field of administrative law (administrative, criminal law or dependent crimes) which are known to be simple and flexible in enforcement of the law, as long as the purpose of the law achieved, that is, the taxpayer is willing to pay taxes following his obligations. Use of criminal law general or special criminal law against criminal acts in the field taxation is inappropriate and can cause problems law and justice. Therefore, a general crime or specific criminal acts relating to the occurrence of the act tax crime is independent. Unless in the future changes are made that criminal acts in the field of taxation is a general crime of a criminal nature or independent (independent crimes or generic crimes) as well crimes contained in the Criminal Code.

⁷¹Simorangkir and Adamanti.

⁷²Shelley D. Golden and others, 'Disparities in Cigarette Tax Exposure by Race, Ethnicity, Poverty Status and Sexual Orientation, 2006–2014, USA', *Preventive Medicine*, 108.December 2017 (2018), 137–44 <https://doi.org/10.1016/j.ypmed.2017.12.017>

⁷³Hidayat, Dian, and Jenvichuwong.

⁷⁴Mochtar and Afkar.

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