

The Criminal Law Policy in the Field of Taxation Based on Interests for the Interest of State Revenue: Study at Pre-Adjudication Stage

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Article Info

Received: 2025-01-18

Revised: 2025-03-14

Accepted: 2025-03-16

Keywords:

**Fiduciary Guarantee,
Deletion, Online
System**

Abstract

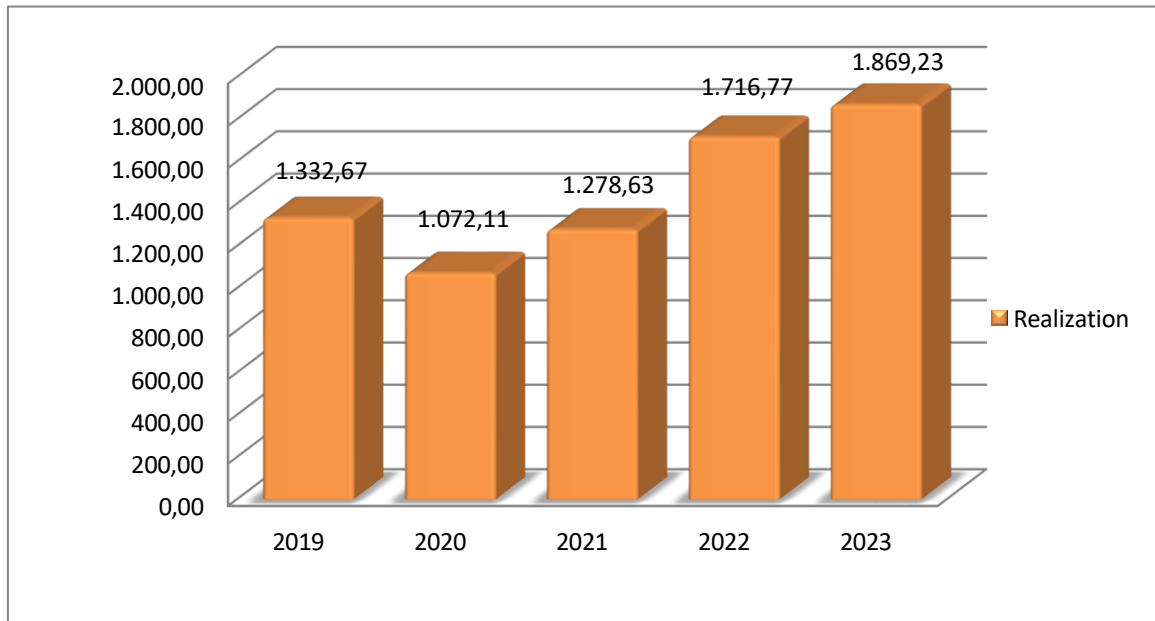
There is a gap between the state's goal of optimizing tax revenues originating from criminal suspects in the field of taxation and the formulation of Article 44B of Law Number 7 of 2021 concerning Harmonization of Tax Regulations. This type of research is normative legal research by adopting a statutory approach, comparative approach, conceptual approach, futuristic approach and case approach. The research results show that the ideal criminal law policy in the tax sector at the pre-adjudication stage in the future is to expand the authority of the Attorney General in terminating criminal cases in the tax sector up to the pre-prosecution process. This policy has the potential to stimulate an increase in state revenue originating from taxes

I. Introduction

Tax is a mandatory contribution to the state owed by individuals or bodies which is mandatory based on the law, without receiving direct compensation and is used for state needs for the greatest prosperity of the people.(Law Number 28 of 2007 on the Third Amendment to Law Number 6 of 1983 on General Provisions and Tax Procedures, Article 1 Number 1, 2007) Based on the tax concept constructed by the legislators in Article 1 number 1 of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures (hereinafter referred to as Law Number 28 of 2007), it can be concluded that the tax collected from each taxpayer will be further diverted as development capital (Kurniawan et al., 2024). Referring to Presidential Regulation Number 18 of 2020 concerning the National Medium-Term Development Plan (hereinafter referred to as RPJMN) for 2020-2024, the development as referred to includes Human Resources (HR) Development, infrastructure development, regulatory simplification, bureaucratic simplification and economic transformation.(Presidential Regulation Number 18 of 2020 on the National Medium-Term Development Plan for 2020-2024, Attachment I.5., 2020)

Based on the research results, it shows that one of the largest allocations of spending needs in Indonesia is in the infrastructure sector, this can be reviewed through a comparison of the amount of the budget set by the government through Presidential Regulation Number 2 of 2015 concerning the National Medium-Term Development Plan for 2015-2019 and Presidential Regulation Number 18 of 2020 concerning the National Medium-Term Development Plan for 2020-2024 which shows a significant increase, namely from IDR 4,7996.2 trillion to IDR 6,445 trillion (an increase of IDR 1,648.8 trillion or 34.4%). The policy to increase the amount of budget allocated for infrastructure development is considered to have a significant and positive effect on encouraging economic growth, increasing welfare and creating investment. Thus, stimulating a surge in economic growth.

Figure 1. Realization of Tax Revenue 2019-2023



Source: Processed by the Author from the Directorate General of Taxes Website

The information in the graph above shows that tax revenue in Indonesia in 2023 reached IDR 1,869.23 trillion, growing significantly by 8.9 percent compared to the realization in 2021 and 2022. In 2020, tax revenue decreased from 2019, this was due to the Covid-19 pandemic phenomenon (CoronaVirus Disease 2019). Tax payments returned to the positive zone in 2021 with tax revenue of IDR 1,278.63 trillion with a growth of 19.3 percent and grew sharply in 2022 with tax revenue of IDR 1,716.77 trillion with a growth of 34.3 percent.(Oktaviyoni, 2024) The dynamics that occur essentially have a positive correlation with taxpayer compliance in paying taxes, one of the efforts that can be made by the government to increase this compliance is by reformulating laws in the field of taxation.(Indawati et al., 2024) Another effort that tends to be effective and efficient is to apply administrative sanctions or criminal sanctions.

Accommodating criminal provisions into a statutory regulation which is administrative in nature is a necessity, according to Scabhmeister, the existence of these criminal provisions serves as a form of preventive effort

as well as a repressive effort which can be intervened by law enforcement officers if it is suspected and proven based on a court decision with permanent legal force to have harmed the interests of a certain party,(Sualeman, 2014) in this case the interests of national development. According to Muladi, the phenomenon of the inclusion of criminal provisions in an administrative law is to strengthen administrative sanctions. However, the application system is *ultimum remedium* or subsidiary which is utilized when the application of administrative sanctions is ineffective.(Maroni, 2015) Another principle known in administrative criminal law is the Una Via principle. The Una Via principle is that anyone who has carried out administrative sanctions is a taxpayer who cannot be subject to criminal sanctions, and vice versa.(Naibaho et al., 2021)

Based on Article 44B of Law Number 7 of 2021 concerning Harmonization of Tax Regulations (hereinafter abbreviated as Law Number 7 of 2021), the principles of *ultimum remedium* and Una Via, which are *in abstracto* in nature, have been explicitly adopted that in the interests of state revenue, upon the recommendation of the Minister of Finance to the Attorney General, the investigation of criminal acts in the field of taxation can be stopped with several provisions for the payment of tax obligations.(Law Number 7 of 2021 on Harmonization of Tax Regulations, Article 44B, 2021) Although the criminal tax law enforcement system in Indonesia through related laws and regulations has accommodated these principles, in practice there are still problems within the Attorney General's Office which have the potential to hinder state revenue from the tax sector if the Public Prosecutor does not act professionally in criticizing the law,(Saputro et al., 2022) especially at the pre-adjudication stage or commonly known as the pre-prosecution stage.

In the Decision of the Tanjung Pinang District Court Number 224/Pid.Sus/2022/PN.Tpg, the Public Prosecutor remains firm in his position to register a tax crime case on behalf of LR as the President Director of PT. WBG at the Tanjung Pinang District Court who is suspected of violating Article 39 paragraph (1) letter I of Law Number 28 of 2007, even though LR has paid off the tax debt and fines as referred to in Article 44 B paragraph

(2) of Law Number 7 of 2021 at the prosecution stage after the submission of the second stage investigation case files. After going through the examination process, being tried and sentenced, LR was found guilty of committing a crime in the taxation sector and was sentenced to a fine of IDR 1,353,335,868 billion.

Thus, the Public Prosecutor has clearly deviated from the objectives of the legislators as regulated in paragraph 44B paragraph (1) of Law Number 7 of 2021, namely for the benefit of state revenue and ignoring the discretionary authority inherent in the Attorney General to set aside cases in the public interest, as stated in Article 35 letter c of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, (Law Number 16 of 2004 on the Attorney General's Office of the Republic of Indonesia, Article 35 Letter C, 2004) as amended by Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. (Law Number 11 of 2021 on Amendments to Law Number 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia., 2021) Based on this explanation, a problem is formulated regarding criminal law policy in the field of taxation at the pre-adjudication stage for the sake of future state revenues.

II. Research Method

This research is a normative legal research to find relevant in concreto law in solving a legal problem. There are several approaches used in this legal research, including the statute approach, case approach, comparative approach, futuristic approach and conceptual approach. Meanwhile, the type of data used is secondary data which consists of primary, secondary and tertiary legal materials. The technique of collecting legal materials is carried out using library techniques. The analysis of legal materials used is descriptive qualitative, meaning that it is interpreting all legal materials that have been collected to then question whether there is a legal vacuum, legal antinomy or conflicting norms and legal ambiguity. The technique of drawing conclusions used in this study is the deductive method

III. Result and Discussion

The Based on Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power, the legislators formulated that in the judiciary there are three principles for the implementation of judicial power, namely simple, fast and low cost (Disantara et al., 2023). Explicitly, the principles in the implementation of judicial power seem to be used in a limited way by Judges in court in examining, trying and deciding a criminal case. The validity of these principles becomes different if we understand them using a logical systematic interpretation by looking at the validity of the phrase "judicial system" in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System(Law Number 11 of 2012 on the Juvenile Criminal Justice System, 2012) the content of which is not only in the process before the trial, but since the beginning of the investigation, inquiry, prosecution, trial and correctional process. Thus, the principles of the implementation of judicial power are essentially not intended specifically, but in general at every level of the criminal justice system.

In Law Number 12 of 2011 concerning the Formation of Legislation (hereinafter abbreviated as Law Number 12 of 2011), the principles of formation and principles of content in an ideal legislation are known. Some of the principles of formation highlighted in this study are the principles of usefulness and effectiveness, while some of the principles of content highlighted in this study are the principles of balance, harmony and alignment. The explanation of Article 5 letter e of Law Number 12 of 2011 states that the principle of usefulness and effectiveness is that every Legislation is made because it is truly needed and useful in regulating the life of society, nation and state.(Law Number 12 of 2011 on the Formation of Legislation, Explanation of Article 5 Letter E, 2011) Meanwhile, the explanation of Article 6 paragraph (1) letter j states that the principle of balance, harmony and alignment is that every material contained in statutory regulations must reflect balance, harmony and alignment between the interests of individuals, society and the interests of the nation and state.(Law Number 12 of 2011 on the Formation of Legislation,

Explanation of Article 6 Clause (1) Letter J, 2011)

The existence of principles in the formation and content of laws and regulations reflects that in order to achieve state goals such as increasing tax revenues in order to realize social welfare, the government needs a series of efforts commonly known as legal politics. The concept of legal politics in the legal basis in Indonesia is essentially contained in the Fourth Principle of Pancasila which reads "... Democracy led by the wisdom of deliberation/representation..." which means that in order to achieve the state's goal of providing legal protection and advancing public welfare, various efforts or methods are needed that originate from the thoughts of the nation's children so as to produce a formulation that has wisdom because it is issued through a long thought process by the President together with the People's Representative Council of the Republic of Indonesia (DPR RI) which is in fact a manifestation of all Indonesian people (Kurniawan, 2022). As for phrases such as criminal law politics, criminal law policies in various literatures, this applies as a specification of the field of legal science which basically has a relatively similar concept.

Marc Ancel uses the term criminal law policy as an art that ultimately has the practical aim of enabling positive legal regulations to be better formulated and to provide guidance not only to legislators, but also to courts that apply the law and also to administrators or implementers of court decisions.(Sriwidodo, 2023) Muladi also emphasized that criminal law policy is a series of activities involving the process of determining objectives and how to implement objectives. Therefore, the concept of criminal law policy will always talk about the means, art and rational efforts to achieve goals.

The Decision of the Tanjung Pinang District Court Number 224/Pid.Sus/2022/PN.Tpg is a form of legal event that has a material norm problem and a formal norm implementation problem by the legislator and the Public Prosecutor. The legislator did not provide an expansion of authority to the Attorney General in terminating a criminal case in the taxation sector, this can be reviewed from the formulation of Article 44B of

Law Number 7 of 2021 which limits it to the investigation level. As a result, when the second stage of investigation files is submitted, it means that the examination process has shifted to the prosecution stage which is marked by the transfer of responsibility for the evidence and the suspect, so that the opportunity for taxpayers to stop the examination process against themselves by paying off the state revenue loss or the amount of tax and its fines is closed.

In practice, the Public Prosecutor does not immediately transfer or register every criminal case file that has been received to the local district court, but there is a time gap to carry out a series of filings by re-studying the results of the investigation in order to make an indictment (pre-prosecution) which means it is still within the scope of pre-adjudication. Thus, taxpayers should still have the opportunity to make payments of tax debts along with the fines set. However, the limited authority granted by the law makers has resulted in the Public Prosecutor taking the policy of rejecting taxpayers' payments.

These problems indicate that the interests of state revenue as stated in Article 44B paragraph (1) of Law Number 7 of 2021 have not been optimal. Thus, if the legal phenomenon is correlated with the principles of formation and the principles of material content in Law Number 12 of 2011, then both from the aspect of the legal structure in this case the Prosecutor's Office and the legal substance in this case Law Number 7 of 2021, both aspects have not fulfilled the principles of utility and effectiveness, the principles of balance, harmony and alignment. A reformulation of the material content of Article 44B paragraph (1) of Law Number 7 of 2021 is needed by expanding the termination of cases to the pre-prosecution stage. This reformulation policy has the potential to prevent legal uncertainty for the Public Prosecutor as the implementer of the law to take and determine criminal law enforcement policies that emphasize more on efficient justice. According to Mardjono Reksodiputro, the aim of the criminal justice system is to prevent people from becoming victims of crime, resolve cases and ensure that convicts do not repeat similar crimes or other crimes.(Reksodiputro, 2020)

One of Mardjono Reksodiputro's opinions is that criminal procedural law or the criminal justice system must aim to resolve cases, have correlation and coherence with the principles of the implementation of judicial power, because when the state has obtained its rights in the form of payment of fines and taxes, the criminal justice subsystem should be able to take a policy to stop the prosecution. This policy will reach benefits, for example, avoiding the accumulation of cases in court. Therefore, lawmakers as legislators and Public Prosecutors as implementers of the law must have a complex understanding of the concept of criminal law policy or ideal criminal law politics in accommodating the characteristics of the current criminal procedural law regime as Mardjono Reksodiputro's opinion.

However, the Public Prosecutor can essentially use discretionary powers attached to the Attorney General based on the principle of opportunity by deviating from the provisions in Article 44B paragraph (1) of Law Number 7 of 2021, considering that the authority to prosecute lies within the Prosecutor's Office, even though its existence in the hierarchy of laws and regulations between Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia as amended by Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia and Law Number 7 of 2021 is at the same level of norms. However, in order to create the principle of legal certainty in the integrated criminal justice system, conflicts of norms between one law and another should be prevented by harmonizing laws and regulations.

The legal system of Spain,(Spain's Criminal Code or Criminal Code of the Kingdom of Spain 2013 (Arts 305.4 and Arts 308)., 2013) Dutch,(The Kingdom of the Netherlands, 2012) and Italy through laws and regulations related to the handling and recovery of state financial losses originating from criminal acts in the field of taxation, has optimized the application of the principle of utility and effectiveness in the applicable positive law, without any restrictions that result in a gap between the objectives of the state and the criminal law policy formulated by the legislators in positive law in Indonesia, namely with the availability of a norm that allows taxpayers to

pay tax debts along with the specified fines without a trial process. Thus, the existence of criminal provisions in criminal law in the field of taxation in the legal systems of the countries of Spain, the Netherlands and Italy is a form of prevention that is *ultimum remedium* or functions when taxpayers do not have good faith to pay tax debts along with the specified fines

IV. Conclusion

The Criminal law policy in the field of taxation at the ideal pre-adjudication stage in the future is to expand the authority of the Attorney General in terminating criminal cases in the field of taxation to the pre-prosecution process, considering that the concept of pre-adjudication is not limited to the investigation process but the entire series up to the pre-prosecution process. The Public Prosecutor can essentially take a discretionary policy by accommodating the principle of opportunity contained in the organic law of the Prosecutor's Office regarding the process of enforcing criminal law in the field of taxation, by deviating from the provisions in Article 44B paragraph (1) of Law Number 7 of 2021, considering that in the criminal justice system the Prosecutor's Office is a "super body" agency in terms of prosecution authority while still being based on considerations of state revenue. Based on the discussion and analysis of the legal issues that are the object of this research, 2 (two) recommendations can be formulated as follows:

1. Taxpayers who have acted in good faith to pay their tax obligations and fines during the pre-adjudication process, but are still subject to criminal threats, can submit a request for a judicial review of the validity of Article 44B paragraph (1) of Law Number 7 of 2021 at the Constitutional Court;
2. The legislators, in this case the President together with the Indonesian House of Representatives, can take a reformulation policy on Law Number 7 of 2021, considering the potential state interests that could hinder the rate of tax revenues owed;
3. In order to improve the professionalism and innovation of Public Prosecutors in making policies regarding a case, the Prosecutor's

Office must organize Education and Training (Diklat) for pre-service and in-service personnel regarding the urgency of discretion in government

IV. References

- Disantara, F. P., Permatasari A. B, R. M., Ilmiah, F., & Chansrakaeo, R. (2023). The Integralistic State Idea: Reconstruction of Administrative Efforts Perspective. *Jurnal Daulat Hukum*, 6(2), 130. <https://doi.org/10.30659/jdh.v6i2.30982>
- Indawati, Y., Anggriawan, T. P., & Sakti, P. B. (2024). Pengaruh Reformasi Perpajakan terhadap Kepatuhan Wajib Pajak di Indonesia (The Influence of Tax Reform on Taxpayer Compliance in Indonesia). *Unes Law Review*, 6, 97.
- Kurniawan, I. G. A. (2022). Putusan Mahkamah Konstitusi Terhadap Undang-Undang Cipta Kerja Dalam Perspektif Filsafat Utilitarianisme. *JURNAL USM LAW REVIEW*, 5(1), 282–298. <https://doi.org/http://dx.doi.org/10.26623/julr.v5i1.4941>
- Kurniawan, I. G. A., Disantara, F. P., Thuong, M. T. H., & Nutakor, B. S. M. (2024). The Business Law in Contemporary Times: A Comparison of Indonesia, Vietnam, and Ghana. *Substantive Justice International Journal of Law*, 7(2), 114–141. <https://doi.org/10.56087/substantivejustice.v7i2.297>
- Maroni. (2015). *Pengantar Hukum Pidana Administrasi*. Anugrah Utama Raharja.
- Naibaho, N., Harkrisnowo, H., Suhariyono, A. R., & Wibisana, A. G. (2021). Criministrative Law: Developments and Challenges in Indonesia. *Indonesia Law Review*, 11, 9–10.
- Oktaviyoni, A. (2024). *Statistik Penerimaan Pajak Tahun 2003 dalam Angka*. Pajak.
- Reksodiputro, M. (2020). *Sistem Peradilan Pidana*. PT. Raja Grafindo Persada.
- Saputro, A. A., Akbari, A. R., Rahmawati, M., Siagian, M. N., & Napitupulu, E. A. T. (2022). Audit KUHAP: Studi Evaluasi terhadap Keberlakuan Hukum Acara Pidana Indonesia. *Institute Criminal Justice Reform*, 63–65.
- Sriwidodo, J. (2023). *Politik Hukum Pidana dalam Pendekatan UU. No. 1 Tahun 2023 tentang KUHP*. Penerbit Kepel Press.
- Sualeman, E. (2014). Kebijakan Penggunaan Sanksi Pidana dalam Perundang-Undangan Hukum Administrasi (Policy on the Use of Criminal Sanctions in Administrative Law Legislation). *Wahana Akademika*, 1, 145.

- Spain's Criminal Code or Criminal Code of the Kingdom of Spain 2013 (Arts 305.4 and Arts 308)., (2013).
- Law Number 16 of 2004 on the Attorney General's Office of the Republic of Indonesia, Article 35 letter c, (2004).
- Law Number 28 of 2007 on the Third Amendment to Law Number 6 of 1983 on General Provisions and Tax Procedures, Article 1 number 1, (2007).
- Law Number 12 of 2011 on the Formation of Legislation, Explanation of Article 5 letter e, (2011).
- Law Number 12 of 2011 on the Formation of Legislation, Explanation of Article 6 clause (1) letter j, (2011).
- Law Number 11 of 2012 on the Juvenile Criminal Justice System, (2012).
- Presidential Regulation Number 18 of 2020 on the National Medium-Term Development Plan for 2020-2024, attachment I.5., (2020).
- Law Number 11 of 2021 on Amendments to Law Number 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia., (2021).
- Law Number 7 of 2021 on Harmonization of Tax Regulations, Article 44B, (2021).
- The Kingdom of the Netherlands. (2012). *The Netherland's General Tax Act (GTA); Criminal Code of the Kingdom of the Netherlands 2012 (Section 74 subsection 1 and 2).*