

Legal Certainty Analysis In The Enforcement Of Tax Crimes In Indonesia Reviewed From Regulatory And Implementation Aspec

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Abstract

Because taxation constitutes the principal source of state revenue, guaranteeing legal certainty when tax offenses are prosecuted becomes an essential precondition for a sound fiscal order. This article examines that legal certainty in Indonesia through two lenses, namely regulation and implementation. Methodologically it rests on normative legal research reinforced by a limited empirical dimension, drawing together statutory, conceptual, and case-based approaches. On the regulatory side, the findings suggest that the General Provisions and Tax Procedures Law (KUP Law), as revised by Law Number 7 of 2021, already supplies a reasonably comprehensive normative structure; even so, a number of provisions, Articles 38, 39, and 39A in particular, remain open to divergent readings, while the reasoning judges rely on when imposing custodial sentences and fines are not yet uniform across rulings. On the implementation side, the overlap between administrative and criminal law breeds difficulty in operating the ultimum remedy principle, and enforcement remains largely repressive without being matched by adequate preventive efforts. On this basis the study proposes harmonizing the criminal provisions of the KUP Law, reinforcing sentencing guidance for the judiciary, and forming an enforcement model that balances prevention and prosecution, so that legal certainty, justice, and lasting taxpayer compliance may be achieved.

Keywords: legal certainty; tax crime; law enforcement; regulation; implementation



INTRODUCTION

Within the state financial structure, taxes play a key role in supporting revenue, playing a strategic role in financing national development. Tax contributions to the State Budget (APBN) in Indonesia have shown an upward trend over time, thus reflecting the health of the tax system as a reflection of fiscal stability. Consequently, taxpayer compliance and reliable tax law enforcement are key factors in achieving optimal state revenue (Ministry of Finance of the Republic of Indonesia, 2023).

Despite this, tax violations are still frequently encountered in the field, whether in the form of tax avoidance or tax evasion. Such phenomena indicate that there are still gaps in the tax law system, both in its regulation and implementation. Prosecuting tax crimes is no simple matter, as the issues overlap between the administrative and criminal spheres, which are intertwined (Darussalam & Septriadi, 2010).

As one of the fundamental principles of a state based on the rule of law, legal certainty ensures that all actions, whether by state officials or citizens, must be based on clear and firm rules. Gustav Radbruch even categorized legal certainty into three basic legal values, alongside justice and utility (Radbruch, 1946). In the realm of taxation, this value is crucial so that taxpayers can clearly understand their rights and obligations, and law enforcement officials adhere to a principled framework when handling violations (Asshiddiqie, 2019).

In practice, tax law enforcement in Indonesia frequently faces the issue of inconsistent application of regulations. When tax authorities and taxpayers interpret a provision differently, the potential for disputes is wide open and ultimately creates legal uncertainty. This situation is further complicated by the rapid change of regulations without adequate publicity (Gunadi, 2021). In terms of regulation, although Indonesia already has the Law on General Provisions and Tax Procedures (UU KUP) and its subsequent amendments, including Law Number 7 of 2021 concerning the Harmonization of Tax Regulations, several of its norms remain open to multiple interpretations, potentially leading to ambiguity when applied (Waluyo, 2017).

At the implementation level, tax law enforcement is often hampered by limited human resources, poor inter-agency coordination, and potential conflicts of interest (OECD, 2022). The tendency to prioritize repressive measures without balanced preventive efforts makes law enforcement reactive, thus failing to stem violations early (Bird & Zolt, 2018). Legal uncertainty in the prosecution of tax crimes also spills over into the investment climate, as investors are generally reluctant to invest in countries with uncertain legal systems (World Bank, 2020). Based



on these various issues, a comprehensive review of legal certainty in the enforcement of tax crimes in Indonesia is needed, both in terms of regulation and implementation.

Formulation of the problem

Based on the background description above, this research formulates two main problems as follows:

First, to what extent is legal certainty in enforcing tax crimes in Indonesia realized when examined through a legal analysis of the judge's considerations based on the KUP Law (Law No. 6 of 1983 and its amendments up to Law No. 7 of 2021) and the Criminal Code, particularly regarding the imposition of criminal sanctions of imprisonment and fines?

Second, how is the implementation of law enforcement for tax crimes in Indonesia in providing legal certainty, especially when examined from the point of contact between administrative law and tax criminal law and from the balance between preventive and repressive measures?

RESEARCH METHODS

The type of research used is normative legal research, namely a study that focuses on applicable legal norms, both those contained in laws and regulations and those that grow through doctrine and jurisprudence, and is equipped with a limited empirical approach to observe how the law works in the field, so that the study covers not only law in books but also law in action (Marzuki, 2017; Sujono & Sudiro, 2023).

Several approaches were taken simultaneously, namely the statute approach through the exploration of the KUP Law and its amendments, the conceptual approach to explore the concept of legal certainty and law enforcement according to experts, and the case approach to dissect decisions related to tax crimes. The legal materials collected include primary materials in the form of laws and court decisions, secondary materials in the form of books, journals, and research results, and tertiary materials such as legal dictionaries and encyclopedias (Soekanto & Mamudji, 2015). The collection of materials was carried out through a literature study, then analyzed qualitatively with a descriptive-analytical style and conclusions were drawn deductively (Moleong, 2018).

In more detail, the analytical method used to answer the first problem formulation is a juridical-qualitative analysis of court decisions (case analysis), namely dissecting the judges'



considerations in a number of tax crime decisions to find argumentation patterns, consistency of norm application, and the presence or absence of disparities in sentencing in cases with comparable characteristics. As for the second problem formulation, a descriptive-evaluative analysis is used of regulations and law enforcement practices, by comparing normative conditions (das sollen) and actual conditions in the field (das sein) to map the gaps in the implementation of the ultimum remedium principle and the balance of preventive and repressive approaches. These two analytical techniques are combined in a complementary manner so that the resulting conclusions are based on both the consistency of norms and the reality of their application (Marzuki, 2017; Ashshofa, 2013).

RESULTS AND DISCUSSION

LEGAL CERTAINTY IN ENFORCEMENT OF TAX CRIMES AS SEEN FROM THE REGULATORY ASPECTS

1. Regulatory Framework for Tax Crimes in the KUP Law and the Criminal Code

The Indonesian tax collection system adheres to the principle of self-assessment, where taxpayers are given full trust to calculate, account for, pay, and report their own tax obligations, while the tax authorities play a role in monitoring and auditing such compliance (Mardiasmo, 2019). This self-assessment characteristic makes the clarity of criminal tax norms so crucial, because the line between administrative errors that naturally occur in the self-calculation process and deviations that carry criminal charges depends heavily on the formulation of Articles 38 and 39 of the KUP Law, which require elements of negligence or intent. When this formulation is open to multiple interpretations, taxpayers who act in good faith in carrying out self-assessment risk being trapped in the criminal realm due to mere administrative errors, while perpetrators who actually intentionally abuse the self-assessment system can hide behind the pretext of miscalculation. Therefore, strengthening legal certainty regarding the formulation of crimes in the KUP Law cannot be separated from the consistency of its application to the principle of self-assessment, which is the backbone of the national tax system (Waluyo, 2017).

From a normative perspective, the regulation of tax crimes in Indonesia is based on Law Number 6 of 1983 concerning General Provisions and Tax Procedures, which has undergone several amendments, most recently through Law Number 7 of 2021 concerning Harmonization of Tax Regulations. The core criminal provisions reside in Articles 38, 39, and 39A of the KUP Law, which classify acts according to the perpetrator's mental attitude, namely negligence (culpa) and



intent (*dolus*), as well as according to the type of act, ranging from failing to submit a Tax Return (SPT), submitting an SPT with incorrect content, failing to remit taxes that have been withheld or collected, to issuing or using tax invoices that are not based on actual transactions (Darussalam & Septriadi, 2010).

Beyond the KUP Law, the Criminal Code (KUHP) serves as a *lex generalis* that provides general principles of criminal punishment, including the principle of legality, the doctrine of fault, and rules on attempted and accomplice punishment. The relationship between the KUP Law, which acts as a *lex specialis*, and the KUHP as a *lex generalis*, requires consistency in applying the principle of *lex specialis derogat legi generali*, to avoid overlapping qualifications for acts that could erode legal certainty (Muladi & Arief, 2010). To provide a clearer picture of the structure of criminal tax norms, a comparison of the provisions of sanctions is summarized in the following table:

Table 1. Comparison of Criminal Provisions in Articles 38, 39, and 39A of the KUP Law

No.	Provision	Form of Action	Threat of Criminal Sanctions
1.	Article 38 of the KUP Law	Due to negligence, not submitting an SPT or submitting an SPT with incorrect/incomplete contents, resulting in losses to state revenue.	The fine ranges from 1 to 2 times the amount of tax owed that is underpaid or not paid, or imprisonment of 3 months to 1 year.
2.	Article 39 of the KUP Law	Intentionally not registering, misusing NPWP, not submitting SPT, submitting SPT with incorrect contents, not depositing tax that has been deducted/collected, and similar acts	Imprisonment of 6 months to 6 years, accompanied by a fine ranging from 2 to 4 times the amount of tax owed that is underpaid or not paid
3.	Article 39A of the KUP Law	Issuing and/or using tax invoices, proof of collection, proof of withholding, and/or proof of tax payment that are not based on actual transactions.	Prison sentence of 2 to 6 years, accompanied by a fine ranging from 2 to 6 times the amount of tax stated in the tax invoice.

Source :Adapted from Law No. 6 of 1983 concerning KUP as last amended by Law No. 7 of 2021



Based on Table 1, it can be seen that lawmakers have structured criminal penalties in stages according to the level of culpability of the perpetrator, from mere negligence (Article 38) to systematic, deliberate action (Article 39A). This stratification is essentially in line with the principle of proportionality in sentencing. Unfortunately, the extremely wide range of penalties, for example, from six months to six years in prison in Article 39, leaves judges with very loose discretion without detailed sentencing guidelines, thus creating the potential for disparity in decisions and ultimately undermining legal certainty (Gunadi, 2021).

The principle of *lex specialis derogat legi generali* is actually sufficient to resolve conflicts between special norms (UU KUP) and general norms (KUHP), but it is not sufficient when the two norms that are in conflict are both in the same position as *lex specialis*, for example when a taxpayer's actions simultaneously fulfill the elements of the crime of money laundering as regulated in Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, or the elements of the crime of corruption in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001. In situations of conflict between *lex specialis* such as this, the doctrine of criminal law offers the principle of *lex specialis* systematic, namely the determination of the applicable law is not merely based on formal specificity, but based on the systematic closeness between the norm and the facts of the act being tried (principle *specialiteit*), so that the provisions that are most relevant to the character of the act are prioritized (Muladi & Arief, 2010; Atmasasmita, 2012). Based on the principle of speciality, if the defendant's core act is a violation of tax administration obligations, then the KUP Law should be prioritized; conversely, if the dominant element is concealing the origin of criminal assets, the provisions of the Money Laundering Law are more appropriate. Clarity in the application of this principle is important to prevent law enforcement from freely choosing the legal basis that best benefits their interests (norm forum shopping), thus ensuring legal certainty and fair treatment for taxpayers.

2. Legal Analysis of Judges' Considerations in Tax Crime Decisions

Legal certainty is not solely measured by the clarity of the formulation of norms, but also by the consistency of judges in applying them. A review of court decisions reveals a variety of considerations, both when considering the fulfillment of the elements of a tax crime and when assessing the severity of the crime. In Supreme Court Decision Number 1609 K/Pid.Sus/2018, the judge emphasized that the application of tax criminal sanctions must adhere to the principle of legal certainty and proportionality between imprisonment or imprisonment and the fine



imposed. Meanwhile, in South Jakarta District Court Decision Number 1201/Pid.Sus/2019/PN.Jkt.Sel, the defendant was sentenced to two years' imprisonment and a fine twice the amount of unpaid taxes based on Article 39 of the KUP Law. A comparison of the judges' considerations in the two decisions is presented in the following table:

Table 2. Analysis of Judges' Considerations in Tax Crime Decisions

No.	Decision	The Judge's Main Considerations	Implications for Legal Certainty
1.	Supreme Court Decision No. 1609 K/Pid.Sus/2018	The imposition of criminal tax sanctions must take into account the principle of legal certainty as well as the proportionality between corporal punishment and fines; criminal penalties are oriented towards recovering losses in state revenue.	Acts as a jurisprudential reference to balance the deterrent function and the function of restoring state revenue (budgetary)
2.	South Jakarta District Court Decision No. 1201/Pid.Sus/2019/PN.Jkt.Sel	The element of intent in Article 39 of the KUP Law is declared proven; a prison sentence of 2 years and a fine of 2 times the amount of unpaid tax is imposed, namely at the minimum limit for the fine.	Shows a tendency for fines to be imposed at the minimum limit, thus raising questions about the benchmark for aggravating and mitigating criminal penalties.

Source :Processed from Supreme Court Decision No. 1609 K/Pid.Sus/2018 and South Jakarta District Court Decision No. 1201/Pid.Sus/2019/PN.Jkt.Sel

Referring to Table 2, it appears that judges at the cassation level have attempted to establish proportionality standards, while at the first level, the benchmarks for determining the



severity of punishment have not been completely uniform. The differing emphasis on deterrence, on the one hand, and the recovery of state revenues, on the other, has in turn given rise to disparities in sentencing for qualitatively comparable acts. Viewed through Radbruch's theory of legal certainty, this situation indicates that formal legal certainty (the availability of written rules) does not automatically result in material legal certainty (predictability of rule application) (Radbruch, 1946; Asshiddiqie, 2019).

3. Problems of Multi-Interpretable Norms and the Application of Criminal Sanctions of Imprisonment and Fines

Several provisions in the General Provisions and Tax Procedures Law (UU KUP) still leave room for various interpretations. The phrase "may cause losses to state revenue," for example, invites debate over whether the losses must be real and measurable or merely potential. Similarly, the dividing line between negligence in Article 38 and intent in Article 39 is not always easy to enforce, even though the criminal consequences are vastly different (Waluyo, 2017). Such ambiguity has the potential to be exploited opportunistically, either by taxpayers hiding behind negligence or by officials imposing the label of intent.

With regard to sanctions, the nature of tax crimes, which prioritize fines as the primary penalty, is fundamentally in line with the function of tax law as a tool for collecting state revenue. Article 44B of the General Provisions and Tax Procedures Law, amended by Law No. 7 of 2021, even allows for the termination of investigations or prosecutions once losses to state revenue have been fully repaid, along with the associated administrative sanctions, affirming that recovery of state losses takes precedence over imprisonment. However, without clear guidance on when imprisonment or confinement is truly necessary and when fines and repayment of state losses are sufficient, criminalization practices become increasingly unpredictable. Therefore, from a regulatory perspective, it can be concluded that the normative framework for Indonesian tax crimes is indeed comprehensive, but it does not fully guarantee legal certainty due to its multi-interpretable norms and the lack of adequate sentencing guidelines (Gunadi, 2021; Sutedi, 2011).

IMPLEMENTATION OF LAW ENFORCEMENT ON TAX CRIMES IN REALIZED LEGAL CERTAINTY

1. Intersection of Administrative Law and Criminal Tax Law

Tax law enforcement in Indonesia takes two paths simultaneously: administrative and criminal. The administrative path includes sanctions in the form of interest, administrative fines,



and tax increases as stipulated in the KUP Law, while the criminal path is only implemented if the taxpayer's actions have fulfilled the elements of a criminal offense as stipulated in Articles 38, 39, and 39A of the KUP Law (Muladi & Arief, 2010). The intersection of these two paths raises conceptual issues surrounding the principle of *ne bis in idem*, namely whether a person may be subject to administrative sanctions and criminal sanctions simultaneously for the same act. In practice in Indonesia, the imposition of administrative sanctions does not automatically close the door to criminal prosecution as long as the elements of the crime are fulfilled (Sutedi, 2011).

A more fundamental problem at the implementation level lies in the application of the *ultimum remedium* principle, which requires criminal law to be used as a last resort when administrative measures are no longer effective. In reality, the boundary between administrative remedies being deemed unsuccessful and criminal remedies being considered appropriate is not always consistently drawn by investigators and prosecutors. This inconsistency creates uncertainty for taxpayers regarding the legal risks looming over them and also opens up room for unequal treatment between cases that are actually similar (Gunadi, 2021). The mechanism in Article 44B of the KUP Law, which permits the termination of prosecution after the payment of state losses, should be read as an affirmation of the *ultimum remedium* principle, not as a bargaining tool whose application relies on discretion without clear criteria.

To ensure a fair implementation of the *ultimum remedium* principle and avoid disparities, this study proposes several more concrete recommendations. First, the Directorate General of Taxes, along with the Police and the Prosecutor's Office, needs to develop joint guidelines that define objective indicators of when a tax case is appropriate for administrative resolution and when it should proceed to criminal proceedings, for example based on the magnitude of losses to state revenue, the taxpayer's good faith in fulfilling their obligations, and the presence or absence of structured and repetitive transaction manipulation. Second, the implementation of Article 44B of the KUP Law should be accompanied by a time limit and standard procedures for submitting requests to terminate investigations, so that the mechanism does not become a bargaining tool that relies on power relations between taxpayers and law enforcement. Third, to prevent disparities between regions and between cases with comparable characteristics, periodic evaluations of decisions to terminate investigations and transfer files to the prosecution stage need to be institutionalized as an internal oversight mechanism.

The issue of the inconsistent application of *ultimum remedium* also highlights the need for a permanent and institutionalized coordination forum among Law Enforcement Officials



(APH), rather than merely an ad hoc coordination forum established on a case-by-case basis. Such a forum, which could take the form of a cross-agency coordination forum between the Directorate General of Taxes, the Police, the Attorney General's Office, and the Financial Transaction Reports and Analysis Center (PPATK), is necessary to align perceptions regarding administrative-criminal boundaries, expedite the exchange of information and evidence, and prevent overlapping handling of the same case by more than one agency (OECD, 2022; Gunadi, 2021). Without an institutionalized coordination forum, uniform application of ultimum remedium will remain dependent on the internal policies of each agency, which are subject to change over time, making it difficult to consistently achieve legal certainty for taxpayers.

2. Balance of Preventive and Repressive Approaches

Effective tax criminal law enforcement requires synergy between preventive and repressive approaches. Preventive approaches include tax education, regulatory outreach, taxpayer counseling, and ongoing compliance development. Repressive approaches involve preliminary evidence review, investigation, prosecution, and criminalization (Arief, 2012). An overly repressive system without robust preventive support tends to only spread fear without truly changing compliance behavior. Conversely, a system that is too lax actually encourages widespread violations and harms state revenues (Gunadi, 2021). A comparison of the characteristics of these two approaches in implementing tax law enforcement in Indonesia is presented in the following table:

Table 3. Comparison of Preventive and Repressive Approaches in Enforcing Tax Criminal Law

Aspect	Preventive Approach	Repressive Approach
Instrument's Shape	Tax education, regulation socialization, counseling, compliance coaching, appeals, and data-based supervision	Examination of initial evidence, investigation, prosecution, through to criminal punishment (prison/detention and fines)
The main purpose	Prevent violations early on and foster voluntary compliance	Providing a deterrent effect while recovering state revenue losses
Nature of enforcement	Be proactive and sustainable	Reactive in nature, only taken after a violation occurs



Aspect	Preventive Approach	Repressive Approach
Current state of implementation	Not yet optimal; the socialization of regulatory changes is not yet evenly distributed and has not reached all levels of taxpayers.	Dominating practice, but disparities in sentencing and inconsistent application of ultimum remedium still frequently occur.
Implications for legal certainty	Increase the predictability of tax obligations for taxpayers	Legal certainty will only be achieved if enforcement is consistent, proportional and free from discrimination.

Source :Adapted from Arief (2012), Gunadi (2021), and OECD (2022)

Referring to Table 3, it can be seen that criminal tax law enforcement in Indonesia still relies on a repressive approach, while preventive measures have not been systematically and measurably implemented. This imbalance has resulted in a reactive nature of law enforcement, thus failing to structurally reduce the number of violations. The experience of several countries demonstrates that a combination of good service, intensive education, and credible enforcement is the most effective recipe for boosting tax compliance (OECD, 2022; Bird & Zolt, 2018).

3. Implementation Barriers and Gaps between De Lege Lata and De Lege Ferenda

From an institutional perspective, the enforcement of tax criminal law faces a number of obstacles, including the limited number and competence of civil servant investigators in the tax sector, weak coordination between the Directorate General of Taxes, the police, the prosecutor's office, and the courts, and the potential for conflicts of interest in handling cases (OECD, 2022). The rapid growth of the digital economy and the rise of cross-border transactions also complicate oversight and evidence collection, necessitating regulatory adjustments and strengthening the capacity of tax institutions (OECD, 2021).

An examination of the gap between the rule of law (da sein) and the rule of law (das sollen) shows that the current situation is still riddled with inconsistent judicial decisions, weak inter-institutional coordination, and norms that are open to interpretation. The desired situation requires clear regulations, measurable sentencing guidelines, the application of ultimum

remedium that adheres to the principles, and a planned preventive-repressive balance (Marzuki, 2017; Atmasasmita, 2012). Legal effectiveness, as emphasized by Soekanto (2016), does not solely depend on the quality of regulations, but also on law enforcement officers, facilities and infrastructure, the community, and legal culture. Therefore, providing legal certainty in the enforcement of tax crimes requires simultaneous improvements in all of these factors, starting from harmonizing norms, strengthening the capacity and integrity of officers, structuring the inter-institutional coordination system, to continuous education for taxpayers.

CLOSING

Conclusion

First, from a regulatory perspective, legal certainty in enforcing tax crimes in Indonesia has not been fully realized. The normative framework in the General Taxation Law (KUP), most recently amended by Law No. 7 of 2021, and the Criminal Code (KUHP) are indeed quite comprehensive and have established sanctions based on the level of culpability of the perpetrator. However, some norms, particularly the phrase "may cause losses to state revenues" and the dividing line between negligence (Article 38) and intent (Article 39), remain open to multiple interpretations, opening up more than one possible interpretation that is equally legally accountable. Therefore, their application depends on the subjective interpretations of investigators, prosecutors, and judges. The wide range of criminal penalties is not accompanied by detailed sentencing guidelines, and legal analysis of judges' considerations reveals disparities in the imposition of imprisonment, prison, and fines among decisions in cases of comparable character.

Second, from an implementation perspective, law enforcement of tax crimes has not been optimal in providing legal certainty. The intersection between administrative law and criminal tax law has not been managed through consistent application of the ultimum remedium principle, making the line between administrative resolution and criminal prosecution difficult to predict. Furthermore, law enforcement remains dominated by a reactive, repressive approach, while preventative approaches through education and compliance development have not been implemented systematically. This is compounded by institutional constraints such as limited human resources and weak inter-agency coordination.



Suggestion

First, lawmakers and the government are advised to harmonize and refine the formulation of criminal norms in the KUP Law, particularly by clarifying the boundaries between negligence and intent and the parameters of losses to state revenues, while also developing sentencing guidelines for criminal tax cases to ensure more measurable judicial discretion. Second, law enforcement officials are expected to consistently and transparently apply the principle of *ultimum remedium* through joint guidelines that regulate objective indicators for administrative and criminal settlements, and to establish a permanent coordination forum between the Directorate General of Taxes, the Police, the Prosecutor's Office, and the Financial Transaction Reports and Analysis Center (PPATK) to align perceptions on case handling and hone the competence of investigators and prosecutors in the taxation field. Third, tax authorities are advised to intensify their preventive approach through massive and continuous education and regulatory outreach, so that a balance between prevention and enforcement can be established, leading to legal certainty and sustained taxpayer compliance. Fourth, in order to overcome norms that are open to multiple interpretations, the relevant authorities need to issue circulars or official explanations that clarify the boundaries of key concepts, such as the phrase "loss to state revenue" and the dividing line between negligence and intent, and include them in binding sentencing guidelines as a common reference for investigators, prosecutors, and judges so that the space for subjective interpretation can be narrowed.

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