



Tax Court Decisions as the Ultimum Remedium for Taxpayers

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Abstract

Taxes obtained can directly finance all state activities. State revenues, while coming from tax revenues, are also obtained from revenues outside of taxes which consist of 3 parts, which can be seen as income, capital or money to finance total government activities as shown in Law Number 17 of 2003 concerning State Finance, which can be explained in principle as follows. First, State revenues are derived from tax revenues. Second, non-tax government revenue. Thirdly, government revenue from grants. The third principle is referred to as state revenue from the tax sector and is still the largest source of revenue for state revenue. Research objectives in this paper are issues concerning taxation provisions; the application of the ultimum remedium is highly dependent on the prevailing priority scale with its main emphasis on optimizing state revenue, and not on the so-called criminal aspect; with the main reason being that the perpetrators of tax crimes should be responsible and continuously return or repair all losses incurred as a result of their mistakes. The method used is normative legal research by elaborating field data with secondary data in the form of primary, secondary and tertiary legal materials to be analyzed qualitatively. The results to be achieved in this study are willing to develop an overall understanding of tax court decisions as an ultimum remedium effort for taxpayers. The application of the ultimum remedium principle directly is to increase state revenue, especially revenue in the sector.

Keywords: Ultimum Remedium; Tax; Taxpayer

A. Introduction

The existence of all countries in the world, in general, can be seen directly from the success of a country in realizing the ideals or goals of its nation. As a country, Indonesia has also determined the goals or ideals to be achieved. The goals or ideals of the Indonesian state can be found directly in the Preamble of the 1945 Constitution which explicitly states that the presence of the state aims to 2 things. First, the state is present to provide protection for all its citizens with all the blood of Indonesia and without discriminating against one citizen with another citizen in the bond of diversity *Tunggal Ika*. Second, the state is present to provide

general welfare and educate the nation's life. Thus, the presence of the Indonesian state, directly for the international world, is to actively participate in implementing world order based on the principles of sovereignty which focus on "Independence, Perpetual Peace, and Social Justice".¹

The existence of a country needs to be supported by its people. The support provided directly by the community is related to state financing in the form of capital or money, which in this case becomes an obligation for the community, namely, to pay taxes.² The taxes obtained can directly finance all state activities. The role of the state is not only to maintain security and public order but the government is also authorized to intervene in all aspects or areas of the lives of its citizens (*staatsbemoeyenis*).³ This means that the state must play an active role in the dynamics of people's lives. Thus, the purpose of the state, whether good or bad, forms the basis for the existence and design of the state. State revenues, while derived from tax revenues are also derived from non-tax revenues. There are three parts that are seen as revenue, capital, or money to finance total government activities as indicated in Law No. 17 of 2003 concerning State Finance, which can be explained in 3 principles which are: 1) State revenues obtained from tax revenues; 2) Non-Tax Government Revenue and 3) Government revenue from Grants. Overall state revenue from the three parts mentioned above, today state revenue from the tax sector can be said, is still the largest source of revenue for state revenue.⁴

P.J.A Adriani defines the term of tax as a dues levied by the state (which can be imposed on taxpayers) and are specifically regulated in tax legislation.⁵ The obligation to pay taxes does not directly get an achievement for a taxpayer. Taxes collected by the government are basically used to finance all government expenditures that are directly related to the administration of the state.⁶ In line with that, Rochmat Soemitro, provides a definition of tax as a number of contributions originating from the community as one of the sources of the state treasury which

¹ See, the purpose of the Indonesian state can be read directly in the Preamble to the *1945 Constitution of Republic of Indonesia*.

² About state finances can be read in full in *Law Number 17 Year 2003*.

³ Vicky Zaynul Firmansyah and Firdaus Syam, "Penguatan Hukum Administrasi Negara Pencegah Praktik Korupsi dalam Penyelenggaraan Birokrasi di Indonesia," *Integritas: Jurnal Antikorupsi* 7, no. 2 (2022): 326, <https://jurnal.kpk.go.id/index.php/integritas/article/view/817>.

⁴ Adrianto Dwi Nugroho, *Hukum Pidana Pajak Indonesia* (Bandung: Citra Aditya Bakti, 2010), 69.

⁵ Jessica Anis, Sofia Pangemanan, and Gustaf Undap, "Kinerja Badan Pengelola Pajak Dan Retribusi Daerah Dalam Penerbitan Bea Perolehan Hak Atas Tanah Dan Bangunan Di Kabupaten Minahasa," *Jurnal Jurusan Ilmu Pemerintahan* 1, no. 1 (2018): 5, <https://ejournal.unsrat.ac.id/index.php/jurnaleksektif/article/viewFile/19803/19400#:~:text=Prof.%20Dr.PJA.%20Adriani,dan%20yang%20gunaya%20adalah%20untuk>.

⁶ Santoso Brotodihardjo, *Pengantar Ilmu Hukum Pajak* (Bandung: Refika Aditama, 2008), 2.

can be imposed, which is regulated directly in tax legislation. The forced nature that is meant in taxation is if a taxpayer does not carry out the obligation to pay taxes, the tax office has the right to collect debts from the taxpayer by force, this can be done by using forced letters and confiscation, and also hostage-taking; against tax payments cannot be shown certain reciprocal services, as is the case with retribution.⁷

As explained, taxes form the basis for various sources of government revenue. Therefore, to maximize tax revenue, the state must strive to improve taxpayer compliance. This is because Indonesia applies a self-assessment system in tax collection. Under this system, taxpayers calculate and remit the amount of tax paid to the state each year in accordance with applicable regulations.⁸ Therefore, it is very necessary for a taxpayer to be aware of paying his obligations.

Previous research conducted by Jumriaty Jusman, et al about The Effect of Corporate Governance, Capital Intensity and Profitability, which is specific, namely: Against Tax Avoidance in the Mining Sector, a taxpayer is said to be an obedient taxpayer, if it meets the criteria determined in accordance with Article 1 Minister of Finance Regulation Number 192/PMK.03/2007 concerning Procedures or commonly in management regarding the Determination of Taxpayers According to Certain Criteria in the Preliminary Return of Excess Tax Payments, which reads⁹ The regulations that occur in every taxpayer by taking into account the various provisions referred to as compliant taxpayers must meet a number of criteria as follows. First, appropriately submit what is called a notification letter. Second, absence of tax arrears that apply to all types of taxes. The exception in this case is about tax arrears that are directly related to the matter of permission to pay or want to postpone payment. Third, all types of taxes owned have no arrears at all. Fourth, everything that is directly related to the Financial Statements is the authority of a Public Accountant to audit it or is usually called a financial supervision institution that comes from the government with a fair opinion which is usually called unqualified for a period of three years that occurs consecutively. Then the fifth, taxpayers have never committed a criminal offense in the field of taxation in the last five years, which is legally valid due to a court decision. Taxpayer compliance remains a very serious problem in

⁷ Rohmat Soemitro, *Pengantar Singkat Hukum Pajak* (Bandung: PT. Eresco, 1992), 1.

⁸ Edi Slamet Irianto, *Politik Hukum Pajak Indonesia: Dalam Praktek Kontemporer* (Jakarta: Halaman Moeka, 2022), 49.

⁹ Article 1 *Minister of Finance Regulation Number 192/PMK.03/2007*.

Indonesia, this is because non-compliant taxpayers have an impact on reducing government revenue from taxation. Taxpayers generally tend to look for loopholes to avoid paying taxes.¹⁰ Further research on the ultimum remedium effort for taxpayers has also been carried out by Santoso Brotodihardjo with the following description. That in tax avoidance efforts two important things that need to be considered by taxpayers are passive resistance and active resistance. Passive resistance consists of obstacles to tax collection and is closely related to the economic structure of a country, the intellectual and moral development of the population and the tax collection technique itself. Passive resistance also exists when control systems are ineffective or cannot be established in the first place. Active resistance is resistance that includes all efforts and actions aimed directly at avoiding taxes. There are three ways to actively resist taxes, namely tax avoidance, tax fraud and tax evasion.¹¹

Yenni Mangoting, et. al. have conducted the same research on taxpayers which is directly related to how to ensure taxpayers to comply with taxation in accordance with statutory regulations. It is described that law enforcement in the field of taxation is very important to ensure that laws and regulations are implemented properly, especially with regard to a sense of justice and legal certainty in society. Administrative authorities and law enforcement authorities are responsible for tax law enforcement. Tax authorities in controlling the attitude of non-payment of taxes by applying pressure that focuses on continuous appeals, audit actions, or the imposition of sanctions and fines.¹² Regarding the various previous research results that have been presented in the literature review, important aspects of the tax court decision as an ultimum remedium effort for taxpayers have not been described in detail on the overall research results. Therefore, the researcher seeks to build this research with a complete topic related to tax court decisions as an ultimum remedium effort for taxpayers.

Administrative law enforcement (*handhaving van het bestuursrecht*) is needed in responding to non-compliant taxpayers, which is part of the *bestuuren* or government authority. Directly related to the definition of sanctions, it is said that sanctions are instruments of public

¹⁰ Jumriaty Jusman and Firda Nosita, "Pengaruh Corporate Governance, Capital Intensity dan Profitabilitas Terhadap Tax Avoidance pada Sektor Pertambangan," *Jurnal Ilmiah Universitas Batanghari Jambi* 20, no. 2 (2020): 702, <http://ji.unbari.ac.id/index.php/ilmiah/article/viewFile/997/723>.

¹¹ Brotodihardjo, *Pengantar Ilmu Hukum Pajak*, 2-5.

¹² Yenni Mangoting, Christopher, Natasya Kriwangko, and Winda Adriyani, "Interaksi Komitmen Dalam Dinamika Kepatuhan Pajak," *Jurnal Akuntansi Multiparadigma* 11, no. 2 (2020): 265, <https://jamal.ub.ac.id/index.php/jamal/article/view/1365/pdf>.

authority used by the authorities in response to non-compliance with administrative law norms. P. de Haan also takes a similar view, saying that administrative law enforcement is often defined as the application of administrative sanctions.¹³ In this case, the tax procedure itself is part of tax administration activities. The term "tax administration" can be interpreted narrowly or broadly. In a narrow sense, tax administration is the administration and enforcement of taxpayer rights and obligations. Meanwhile, in a broad sense, tax administration is seen as a function, system, and institution.¹⁴ The application of criminal law in the field of taxation is also important. If certain provisions are violated, the perpetrators must be subject to criminal sanctions. The application of criminal sanctions is actually the ultimate weapon (last) or ultimum remedium that will be applied if administrative sanctions are deemed insufficient to achieve the objectives of law enforcement or a sense of justice in society.¹⁵ In imposing criminal sanctions in tax court, judges are required to be able to decide a decision in accordance with applicable norms. In general, the judge's decision must be based on evidence, as well as in tax decisions as stipulated in Article 78 Law Number 14 of 2002 concerning the Tax Court, namely the decision of the Tax Court is taken based on the results of the evidentiary assessment, and based on the relevant tax laws and regulations, as well as based on the conviction of the Judge.¹⁶

As for the evidence applicable in court proceedings, especially tax courts that have been regulated in a special rule, Article 69 paragraph (1) Law Number 14 of 2002 concerning Tax Court, includes letters or writings, expert testimony, the testimony of witnesses, confessions of the parties; and/or knowledge of the Judge. In the tax court process, considering that the object of the dispute is a decision letter from government officials that is written, the tendency of evidence that is considered to have more binding force than others is written evidence.¹⁷

Normative juridical method is a study approach in which the laws and rules applicable to a particular legal issue are examined. Thus, legislative texts in the sense of academic papers and library materials are the subject of research, so normative research is often referred to as

¹³ Tatiek Sri Djamiati, *Aspek Administrasi Penegakan Hukum Perpajakan* (Surabaya: Airlangga University Press, 2011), 3.

¹⁴ Simanjuntak and Mukhlis, *Dimensi Ekonomi Perpajakan dalam Pembangunan Ekonomi* (Jakarta: Raih Asa Sukses, 2012), 81.

¹⁵ Waluyo, *Perpajakan Indonesia* (Jakarta: Salemba Empat, 2010), 9.

¹⁶ Article 78 Law Number 14 Year 2002 concerning Tax Court.

¹⁷ Waluyo, *Perpajakan Indonesia*, 9.

library research. This research used normative juridical method, which elaborate primary data with secondary data. Secondary data consist of primary, secondary and tertiary legal materials to be analyzed qualitatively. This is done with the intention that the tax court decision as an ultimum remedium for taxpayers can increase the number of taxpayers and the tax opinion itself.

The statutory approach is used to examine Law Number 14 of 2002 concerning the Tax Court, Law Number 17 of 2003 concerning State Finance, which is contained in a special law, Law Number 11 of 2020 concerning Job Creation, Law Number 7 of 2021 concerning Harmonization of Tax Regulations and directly contained in Minister of Finance Regulation Number 192/PMK.03/2007 which also directly contains procedures for determining taxpayers who meet certain criteria in the preliminary refund of tax overpayments, as well as other laws and regulations related to research issues.

B. Discussion

B.1. Application of the Ultimum Remedium Principle in the Imposition of Criminal Sanctions Against Taxpayer Crimes

Tax offenses are criminal activities committed by taxpayers (individuals or companies) that can result in losses to the state's tax sector revenue. Such acts can be divided into two categories: negligence (*delict*) and intentionality (*criminal offense*).¹⁸

Furthermore, Article 43 paragraph (1) Criminal Law Code (KUP Law) states that tax crimes can be committed by taxpayers "*plagen* or *dader*", as well as by "*deelderling*" participants, including representatives, attorneys, or employees of taxpayers, as well as by other parties who order to do "*doen plager* or *midedader*", participate in "*medeplegen* or *mededader*", encourage to do "*uitlokker*", or help to do "*medeplichtige*". This is done to hold the perpetrators of tax crimes accountable.¹⁹

Making false statements in reports related to tax collection by submitting tax returns with untrue or incomplete information or by attaching false information so that the state suffers a loss, as well as other violations covered by the Taxation Law, are examples of tax crimes

¹⁸ Hadi Irawan, *Pengantar Perpajakan* (Malang: Bayu Media, 2003), 10.

¹⁹ *Ibid.*

involving tax returns.²⁰ The tax return becomes the fundamental basis for the audit. As a result, whether or not a taxpayer is audited will depend on the state of the tax return reported by the taxpayer. To find out how much tax is owed, and how much tax is underpaid or overpaid within a certain period, such as a certain tax period or tax year, SPT is also used to report the calculation and payment of obligations.²¹

In acting against every mistake made by taxpayers, law enforcement officials, especially in this case judges, are given the choice or alternative to applying the rules of the game in the form of administrative sanctions and criminal sanctions which are expected to be in accordance with their authority. Furthermore, regarding administrative sanctions, the main emphasis is limited to certain taxpayers. Regarding tax data that is not reported by taxpayers, this occurs because of the untruth in filling out the Annual Tax Return (SPT) or this is due to the discovery of fiscal data about taxpayers that are not reported. The tax law does not clearly state the definition of certain taxpayers, which causes law enforcement to be indecisive against taxpayers who report taxes incorrectly. Incorrectness that is directly related to the filing of tax returns should be sanctioned, and the sanctions that occur in this case are administrative sanctions or criminal sanctions. Furthermore, the principles of rationality and proportionality, along with further consideration of the principles of legality, practicality, and effectiveness, are legal principles that are prioritized in relation to the formulation of criminal sanctions before the application of the ultimum remedium principle as a fundamental legal principle.²²

There are taxpayer errors that can be sanctioned. The sanctions obtained consist of two types, namely administrative sanctions that occur purely and administrative sanctions that occur intentionally.²³ The two sanctions can be successively explained as follows:

1. The principle of application regarding matters directly related to pure administrative error is based on the provisions in Article 2 number 4 paragraph (1) of Law Number 7 of 2021

²⁰ “Pengaturan Hukum Pidana di Bidang Perpajakan,” Departemen Keuangan, accessed November 2, 2022, <http://www.bppk.depkeu.go.id/webpajak/index.php/layanan-diklat/seputar-diklat/1421-pengaturanhukum-pidana-di-bidang-perpajakan>.

²¹ Sarah Hasibuan, Madiasa Ablisar, Marlina, and Utary Maharany Barus, “Asas Ultimum Remedium Dalam Penerapan Sanksi Pidana Terhadap Tindak Pidana Perpajakan Oleh Wajib Pajak,” *USU Law Journal* 3, no. 2 (2015): 118, <https://jurnal.usu.ac.id/index.php/law/article/view/10830/0>.

²² Angger Sigit Pramukti and Fuady Primaharsya, *Pokok-Pokok Hukum Perpajakan* (Jakarta: Media Pressindo, 2018), 20.

²³ Mudzakkir, “Pengaturan Hukum Pidana Di Bidang Perpajakan Dan Hubungannya Dengan Hukum Pidana Umum Dan Khusus,” *Jurnal Legislasi Indonesia* 8, no. 1 (2011): 46, <https://e-jurnal.peraturan.go.id/index.php/jli/article/view/346/231>.

which reads as harmonization that is directly related to tax regulations, should be precisely the fault of the taxpayer. This can be done by sending a Tax Collection Letter (STP), with the main argument that the error is still simple, humane, procedural/formal, and there is no malicious intent or crime as shown below:²⁴

- a) About income tax in the current year is not underpaid;
- b) About the results of the research that found a deficiency in tax payments as a result of writing errors and/or miscalculations;
- c) About taxpayers who are subject to administrative sanctions in the form of fines and/or interest;
- d) About entrepreneurs who have been confirmed as taxable entrepreneurs, but do not make tax invoices or make tax invoices late;
- e) Entrepreneurs who as taxpayers confirmed by the tax law have become taxable entrepreneurs.

According to the provisions of Article 13 paragraphs (5) and (6) of the 1984 Value Added Tax Law and its Amendments, entrepreneurs do not fill out tax invoices completely. In addition, in the case of deliveries made by retail traders who are Taxable Entrepreneurs, the name and signature as specified in Article 13 paragraph (5) letter b and letter g of the 1984 Value Added Tax Law and its amendments, as well as the Taxable Goods or the recipient of Taxable Services. Further explanation is as follows:²⁵

- a) For the existence of interest subsidy that should not be given to the taxpayer, in the event that a decision letter is issued; a decision letter is subsequently received; data or information is subsequently found indicating the existence of interest subsidy that should not be given to the taxpayer, or there is an amount of tax that is not or underpaid within the period allowed by the approval of the due date or postponement of tax payment as referred to in Article 9 paragraph (4).
- b) The application of administrative violations stipulated in the Job Creation Law actually functions as an effort aimed at law enforcement in the realm of tax audits both

²⁴ Simon Nahak, *Hukum Pidana Perpajakan* (Malang: Setara Press, 2014), 12.

²⁵ Agus Puji Priyono and Antonia Intarti, "Penegakkan Hukum Sanksi Pidana Perpajakan Berdasarkan Undang-Undang Nomor 16 Tahun 2019 Tentang Ketentuan Umum dan Tata Cara Perpajakan Dikaitkan dengan Asas Ultimum Remedium," *Wacana Pramarta Law Journal* 18, no. 1 (2019): 3, <https://doi.org/10.32816/paramarta.v18i1.62>.

administrative and accommodating all crimes. In this section, discretion is categorized as an administrative offense, resulting in ambiguity in the application of tax law.

Taxpayers who commit administrative violations have specifically been regulated in Chapter VI Part Seven, which is regulated in Article 113 number 4 contained in Law Number 11 of 2020 which speaks directly about Job Creation which should pay attention to 3 (three) main principles in law which are commonly referred to as approaches, which can be explained as follows:²⁶ a). Serves as a means of enforcing the law against first-time criminal administrative offenses; b). As a means of enforcing administrative violations intended for the mistakes of Taxable Entrepreneurs who do not register themselves to obtain NPWP or be confirmed as Taxable Entrepreneurs. The sanctions given have actually been determined since a person qualifies as a taxpayer by taking into account the tax expiration.; c). Consideration of a criminal offense of an administrative nature in accordance with the discretionary authority of tax officials can be explained with the following examples, namely: incomplete administrative attachments, absence of withholding tax or lack of tax collection, transfer pricing, misapplication of provisions, misinterpretation of provisions, and also not / lack of self-remittance of tax.

2. to the application of administrative offenses committed intentionally to errors that occur to taxpayers. Errors that occur intentionally directly cause consequences received by a taxpayer, these errors can be described in detail as follows.²⁷ First, the tax that has been collected or has been deducted, a taxpayer does not carry out his obligations, namely not depositing or paying taxes. Second, a taxpayer shows false documents or books to the tax officer. This is where tax fraud occurs. Third, there is a misuse or the right to directly use the NPWP. Fourth, during an audit, a taxpayer knowingly disobeys or refuses to be audited. Fifth, taxpayers who have not been gazetted knowingly issue tax invoices. This is not his authority over the validity of the document. This is evident in the tax deduction receipts, and/or tax deposit receipts that are considered and appear to be completely inconsistent with the actual transaction. Sixth, the mistake is a taxpayer knowingly issues an important

²⁶ *Ibid.*, 13.

²⁷ Diaz Priantara, *Kupas Tuntas Pengawasan, Pemeriksaan, Dan Penyidikan Pajak: Prosedur, Formulir, Dan Trik-Terik Yang Harus Diketahui Wajib Pajak Agar Terhindar Dari Kekeliruan* (Jakarta: PT Indeks, 2011), 32.

letter, namely a tax invoice, even though the person concerned has not been confirmed as an entrepreneur who is directly taxable.

The two administrative sanctions described can result in criminal legal action if similar mistakes are made in the same way and occur repeatedly, especially if there is an element of intent. Taxpayer errors can be categorized as criminal offenses (criminal administrative offenses), the main thing to note is to prioritize the substance of the action, both the materiality of the error, as well as the extent of the negative impact. The above matter has actually been expressly regulated in Chapter VI Part Seven, which speaks directly about Job Creation found in Article 113 number 12 of Law Number 20 of 2020 which reads as follows.²⁸ First, a taxpayer knowingly never submits a letter called a tax return; and second, a person is obliged to submit a letter called a notification letter, but the contents of the letter are incomplete or incorrect or also attach a certificate whose contents are incorrect; which has an impact on the loss of state tax revenue. Thus, such taxpayer errors can be subject to a fine of at least 1 (one) time the amount of tax debt that is not or underpaid and a maximum of 2 (two) times the amount of tax debt that is not or underpaid, or imprisonment of at least 3 (three) months and a maximum of 1 (one) year. The overall regulation of errors committed by a taxpayer, which has been described above, substantially needs to be regulated through a regulation in the form of legislation; where this is to serve as a parameter and is binding in determining someone who has committed a tax offense. This has also been emphasized by Muchsan, in his book entitled "Some Notes on State Administrative Law and State Administrative Courts in Indonesia".²⁹

Those criteria can make tax law enforcers easier to immediately decide whether to impose administrative or criminal sanctions on tax fraudsters. The arguments supporting this claim, government officials are still allowed to directly determine and decide everything even though there is uncertainty in the laws and regulations. The general principle of good governance as stated in Article 9 paragraph (4) Law No. 30 of 2014 concerning Government Administration should be adhered to when such matters directly benefit the public. If other legal tools such as administrative law or civil law are ineffective, the issue of applying the so-called ultimum remedium principle associated with the enforcement of criminal penalties

²⁸ Article 113 (2) *Law Number 11 Year 2020 concerning Job Creation*.

²⁹ Henry D.P. Sinaga and Benny R.P. Sinaga, *Rekonstruksi Model-Model Pertanggungjawaban di Bidang Perpajakan dan Kepabeanan* (Yogyakarta: Kanisius, 2018), 30.

imposed on taxpayers may be successful. It is likely that the application of this approach in the tax domain will be observed on a priority scale, where the goal is to maximize state revenue and not at all on the criminal element. The perpetrator of a criminal offense must take full responsibility to cover the losses caused by his or her misconduct.

B.2. The Position of the Ultimum Remedium Principle in the Taxation Law

The basic thesis derived from Sajipto Rahardjo's thinking clearly says that the soul of legal norms is legal principles, so legal principles are not concrete legal norms. The soul of legal norms or what is commonly called legal regulations as legal principles is argued as the basis for the birth of a legal regulation or in other words referred to as the ratio-legis of legal regulations. Thus, it is precisely the basic thesis of Sajipto Rahardjo's thinking that in relation to legal principles, whatever the regulations are, in the end, everything is returned to the legal principles themselves. It should be underlined that: The main definition of legal principles is all the general bases covered by legal regulations and the general basis of these regulations always contains ethical values.³⁰ *Ius poenale* in criminal law always contains everything related to the prohibition of an act that is always contrary to the rule of law and imposes suffering or suffering for anyone who is always contrary to law. The *ius poenale* referred to here actually always reflects the right of the state or state equipment aimed at threatening and imposing punishment for certain actions. The *ius poenale* in Criminal Law is always a law that continues to indicate its sanctions to be more severe when compared directly with other legal sanctions such as civil law and administrative law.³¹ The conclusion given by a legal expert, Zainal Abidin Farid is that criminal law is always different from other laws, with the basic argument being that a sanction is always a special form of suffering. Therefore, it remains what is called the ultimum remedium. In the theory of criminal law, the basic thesis of the argument regarding the last means or Ultimum Remedium is used as a framework intended to show what actions will be criminalized (or in other words, it is always used as a legal act or offense where every action is always related to the issue of punishment). Specifically, and what needs to be

³⁰ Sajipto Rahardjo, *Pengantar Ilmu Hukum* (Jakarta: Prenhallindo, 2001), 88.

³¹ Muladi, *Ambiguitas Dalam Penerapan Doktrin Hukum Pidana Antara Doktrin Ultimum Remedium dan Doktrin Primum Remedium* (Makassar: TP, 2003), 13.

underlined here is that the criminalization step itself is included or covered in what is called the theory of Criminal Policy.³²

In law, criminal law as the last tool or ultimum remedium is used if various other efforts can no longer be done. This is done because of the nature of the punishment which always causes what is called pain. This thought has always been the basic thesis of Sudarto's thinking about crime, which is directly useful as a means of preventing crime. Ultimum Remedium (as the last remedy) in this section is also directly related to the subsidiary function of criminal law. This also becomes an important alternative if other drugs outside of criminal law can no longer be used effectively.³³

Van Bemmelen's main idea about the law is that it must be able to distinguish between what is called criminal law and other areas of law.³⁴ What distinguishes this is that criminal law sanctions are directly imposed, and intentional suffering occurs where there is also no so-called crime victim. This difference is the main character in responding to criminal law, which is referred to as the ultimum remedium, namely the final effort to directly improve human behavior. In particular, it is directly related to criminals so there is a deterrent effect in relation to psychological pressure so that anyone no longer commits crimes. In criminal law, the context is that its application should be limited because the direct sanction obtained is suffering. Or in other words, the ultimum remedium can be used if other legal sanctions are no longer effective.³⁵ In relation to the ultimum remedium in punishment, the opinion of Cesare Beccaria Bonesana, emphasizes two important things that need to be underlined, which he calls the objectives of special prevention and also general prevention. The purpose of punishment in this case is to prevent the violator from repeatedly harming the community again or in this case, there is a deterrent effect in the sense of directly frightening anyone not to do it again. The main point that Beccaria's jurists emphasized was the consequences that continue to affect society at large. The basic argument in this regard is the belief that in criminal matters it is impossible to escape the punishment that one is supposed to receive, as well as the loss of profit

³² H.A. Zainal Abidin Farid, *Hukum Pidana I* (Jakarta: Sinar Grafika, 2007), 13.

³³ *Ibid.*, 26.

³⁴ Soemardjono Brodjo Soedjono, "Pemikiran Pembentukan Kitab Undang-Undang Hukum Pidana (Kuhp) Tentang Pidana dan Lembaga Pidana," *Jurnal Ratu Adil* 3, no. 1 (2014): 24, <https://ejournal.unsa.ac.id/index.php/ratuadil/article/view/25/25>.

³⁵ P.A.F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia* (Bandung: PT. Citra Aditya Bakti, 1997), 17.

generated by the crime. The corollary to this is that the Bacarian thesis suggests that all matters of excessive violence are unnecessary because they are direct torts.³⁶

The ultimum remedium principle states that the existence of the Director General of Taxes as a tax collector has the authority to override justice for taxpayers and the wider community. This position is regulated in Chapter VI Part Seven Article 113 number 13 Law Number 11 of 2020 concerning Job Creation. Since the purpose of tax laws and regulations is to ensure that taxpayers understand the rules in order to maximize tax revenues, then efforts to realize justice; will actually increase the cost of tax collection and reduce state revenues.³⁷

In essence, the existence of tax law is actually a direct effort to increase government revenue by enforcing criminal law, which in principle is returned to the purpose of punishment itself. Criminal sanctions basically have two main purposes, namely to scare taxpayers and/or act as a deterrent to assist the enforcement or implementation of administrative laws and regulations.³⁸ The Taxation Law, on the other hand, uses penalties to increase taxpayer awareness and have a deterrent effect in terms of compliance with tax obligations. This directly emphasizes that the main function of tax is for state revenue (budgetary function) compared to other functions such as regulating, stability, and income redistribution. If the consequence of tax law is administrative criminal law, the enforcement of criminal law should be subsidiarity, when the enforcement of administrative law is ineffective; then the enforcement of criminal law (ultimum remedium) is operationalized.³⁹

The ultimum remedium principle is used to achieve the main objectives of the law, namely expediency, and justice, or efficiency and equality. The implementing regulations of the General Provisions of Taxation law, in particular the Decree of the Director General of Taxes Number KEP-272/PJ/2002 dated May 17, 2002, concerning Guidelines for the Implementation of Observation, contain provisions regarding the use of the ultimum remedium

³⁶ "Ultimum Remedium dalam Aritikel Hukum," LBH PERS, accessed November 8, 2022. <https://anggara.files.wordpress.com/2008/07/keterangan-bu-yenti.pdf>.

³⁷ Hasibuan, Ablisar, Marlina, and Barus, "Asas Ultimum Remedium Dalam Penerapan Sanksi Pidana," 118.

³⁸ Emmilia Rusdiana, "Pemenuhan Perumusan Dan Penyelenggaraan Hukum Pidana Pada Pelanggaran Pajak Demi Pencapaian Tujuan Peraturan Perundang-Undangan Perpajakan," *Journal Suara Hukum* 4, no. 1 (2022): 42, <https://doi.org/10.26740/jsh.v4n1.p39-61>.

³⁹ Unila and Polda Sumbagsel, *Peningkatan Wibawa Penegakan Hukum* (Bandar Lampung: Sagitarius, 2017), 5.

principle in law enforcement.⁴⁰ After various actions are taken, efforts are made to enforce the provisions of the applicable tax laws. These steps include looking at preliminary evidence and tracing criminal offenses related to taxation. The ultimum remedium principle has also been applied since Law Number 27 of 2008 enacted on January 1, 2008. This is expressly stated in Article 44B of Law Number 11 of 2020 concerning Job Creation, as revised by Article 113 number 13. Moreover, in the explanatory memory of Article 13A of the Law on General Provisions of Taxation as amended by Law Number 7 of 2021 concerning Harmonization of Tax Regulations, which is contained in Chapter VI, Part Seven, which discusses taxation. The final step to improve taxpayer compliance is to impose criminal sanctions. In contrast, taxpayers who violate or forget to comply with the submission of SPT for the first time cannot be subject to criminal sanctions. The only type of sanction imposed is administrative sanctions. Nevertheless, there is still a problem because it is still believed that other forms of law enforcement do not adhere to the ultimum remedium understanding if there is a contrario interpretation.⁴¹

The underlying reason is that systematic legal interpretation is necessary because there can be ambiguity in tax law if the ultimum remedium model is not included in a chapter or article. The legal interpretation of the words in the regulations is still seen as a cohesive unit that is methodically integrated and still appears to support each other. Therefore, legal rules that are more organized and integrated and still seem to support each other are needed by tax law enforcers. Thus, it is emphasized that the absence of clear legal rules and the existence of overlapping parts (over-lapping) and unrelated to each other, the legal interpretation of the ultimum remedium until now is still inconsistent.⁴²

C. Conclusion

Legal issues that are directly related to the application of the ultimum remedium principle are very important in the field of law, especially in imposing criminal sanctions on taxpayers. The main argument is that civil law and administrative law are no longer effective.

⁴⁰ Nendy Damayanti, Puspita Adhy Surya Ningsih, and Andi Ersandhi Ramadhan, "Penegakan Hukum Dalam Tindak Pidana Perpajakan Terhadap Faktur Pajak Tidak Sah Yang Dilakukan Oleh PT. DC," *Journal Lex Suprema* 4, no. 1 (2022): 958, <https://jurnal.law.uniba-bpn.ac.id/index.php/lexsuprema/article/view/563>.

⁴¹ Tjia Siau Jan, *Pengadilan Pajak: Upaya Kepastian Hukum dan Keadilan Bagi Wajib Pajak* (Bandung: PT. Alumni, 2013), 61.

⁴² *Ibid.*

In issues concerning taxation provisions, the application of this ultimum remedium is highly dependent on the prevailing priority scale with the main emphasis on optimizing state revenue, and not on what is called the criminal aspect. The main purpose of the application of the ultimum remedium principle is to increase state revenues, especially revenues in the tax sector with the argument that the perpetrators of tax crimes should be responsible and continuously return or repair all losses incurred as a result of their mistakes. Thus, the thesis of state revenue is prioritized. Regarding the ultimum remedium principle, its position is always regulated in the General Provisions of Taxation as stated in Article 44B of Law Number 11 of 2020 concerning Job Creation. The ultimum remedium principle previously applied explicitly in the Decree of the Director General of Taxation Number KEP-272/PJ/2002 concerning Guidelines for the Implementation of Observation, Preliminary Evidence Examination, and Investigation of Criminal Acts in the field of taxation; which explicitly states that basically, the investigation of criminal acts in the field of taxation is the last resort in tax law. Furthermore, since Law Number 27 of 2008 has only introduced the ultimum remedium principle which is explicitly stated in Article 44B; as amended by Article 113 number 13 of Law Number 11 of 2020 concerning Job Creation in Chapter VI of the Seventh section which contains Taxation and in the memory of the explanation of Article 13A of the General Provisions of Taxation Law as amended by Law Number 7 of 2021 concerning Harmonization of Tax Regulations, namely in the form of the main confirmation that the imposition of criminal sanctions is the last resort in increasing compliance for taxpayers.

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