



# Criminal Law Policy in the Harmonization of Tax Regulations: Its Implications for State Income from the Tax Sector

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## ABSTRACT

Criminal acts in the field of taxation are a form of crime that is very detrimental to the state because they hinder state income from the tax sector. Taxes are the primary source of state income, which is then used for state management and in implementing development to improve community welfare. One effort to minimize criminal acts is to create regulations that become the basis for law enforcement for tax obligations. Overcoming criminal acts requires a criminal law policy that supports law enforcement. Criminal law outlines criminal policy, either substantive or procedural criminal law. The formulation of criminal law policy in tax laws is in line with the formation of tax law through the tax reform policy, which began in 1986 through the formation of several laws in the field of taxation. Finally, the Law Number 7 of 2021 concerning the Harmonization of Tax Regulations continues the policy. With the implementation of the Law on Harmonization of Tax Regulations, there needs to be a more in-depth study of tax criminal policies in this law towards optimizing state revenues from the tax sector. The research was conducted using normative legal research methods and supported by primary data. The approach used is a statutory approach, namely by analyzing various related laws in studying legal synchronization both vertically and horizontally and using legal theories. The research finds that criminal law policy in the Law on Harmonization of Tax Regulations applies more non-penal than penal policy. Non-penal prioritizes administrative settlement rather than criminal law settlement. The administrative settlement will enable more income through administrative fines. However, this approach does not fully support optimizing state revenues from the tax sector in the long run because this policy would not support taxpayer compliance.

## 1. Introduction

Tax is the state finance's primary source, so the state would depend on tax to facilitate all state activities. Tax is also a funding tool for various activities in state management<sup>1</sup>. Over time, the country's needs for the tax sector are increasing. Even modern countries have increasingly high levels of dependence on the tax sector.<sup>2</sup>

The state's need for taxes is inseparable from efforts to increase tax sources, namely through developing citizen activities, especially in the economic sector. The country's tax potential will grow

<sup>1</sup> Mustaqiem, *Perpajakan Dalam Konteks Teori Dan Hukum Pajak Di Indonesia* (Yogyakarta: Buku Litera, 2014).

<sup>2</sup> Hoa Thi Nguyen, Susilo Nur, and Aji Cokro, "The Impacts of Tax Revenue and Investment on the Economic Growth in Southeast Asian Countries," *Journal Accounting and Investment* 23, no. 1 (2022): 128-46, <https://doi.org/10.18196/jai.v23i1.13270>.

as the economy continues to develop. Therefore, tax, on the one hand, is an income source for the state; on the other hand, it is also a means for the state to develop economic activity or what is also called capacity building, which will also be a source of income from the tax sector <sup>3</sup>.

The state or government has two main tax functions: regulatory, budgetary, redistributive, and resource allocation, or a combination of the four. In the regulatory function, taxes are a tool for the state or government to regulate the country's economy through policies in the field of taxation <sup>4</sup>. In the budgetary function, taxes are a source of state income that will provide all state financing by the government. In the redistribution function, the government reallocates income from the tax sector for various purposes to develop state economic activities, including if there is still a surplus (public savings); these funds will finance the government investment. If the surplus or public saving is insufficient to finance development, then an alternative funding source comes from debt<sup>5</sup>. Meanwhile, the resource allocation function means that taxes are a source for various development financing sectors in the country.

The Posture of the Natioan budget shows the importance of tax incomes in national expenditure. The tax role increases year by year. In 2020, the government budget was IDR 1,647.8 trillion, and the tax sector contributed revenue of IDR –1,285.1 Trillion (78%). The 2021 APBN is 2,011.3 T, while tax provides IDR –1,547.8 trillion (77%. Meanwhile, the realization of the 2022 APBN is 2,074.5 trillion, while tax revenue is IDR 1,784 trillion (84%), an increase of 31.4% from the previous year <sup>6</sup>.

Various factors may hamper the role of tax as the primary source of state income. One of them is an act classified as a criminal offense in taxation, whether in tax avoidance or tax evasion. Sometimes, explaining the difference between tax avoidance and tax evasion is difficult <sup>7</sup>. Tax evasion usually qualifies as the illegal action of taxpayers to avoid tax obligations, such as refraining from reporting their income as a tax object. Tax avoidance is finding a loophole to reduce the tax obligation. However, it is still in a legal framework <sup>8</sup>.

Tax evasion or tax avoidance as Criminal acts cause enormous losses to state income. State loss from the tax sector may become a shadow economy, namely economic activities outside the tax system's reach. Losses due to the shadow economy are estimated to reach 1% of Indonesia's gross net income <sup>9</sup>. If Indonesia's GDP in 2022 is IDR 19,588.4 trillion in 2022, the losses experienced will be around IDR. 195 trillion. One of the enormous amounts of tax evasion is the case of P.T. Asian Agri, which caused a state loss of Rp. 1.3 trillion <sup>10</sup>.

The urgent role of taxes for the state and the enormous potential for criminal acts in the tax sector require state policies to increase revenue from the tax sector. Indonesia began this policy through a tax reform policy that began in 1983. A series of other reforms, namely in 1994 and 1997, followed the

<sup>3</sup> Vitor Gaspar, Laura Jaramillo, and Philippe Wingender, "Political Institutions , State Building , and Tax Capacity : Crossing the Tipping Point," 233, 2016, <https://doi.org/10.5089/9781475558142.001>.

<sup>4</sup> F C Susila Adiyanta, "Karakteristik Responsif Peraturan Daerah Tentang Pajak-Pajak Daerah Sebagai Representasi Dan Partisipasi Kehendak Publik," *Administrative Law & Governance Journal* 2, no. 3 (2019): 380–99.

<sup>5</sup> Rochmat Soemitro, , *Dasar-Dasar, Hukum Pajak Pendapatan*, (Jakarta: Salemba Empat, 2007).

<sup>6</sup> Kemenkeu, "Kinerja Penerimaan Negara Luar Biasa Dua Tahun Berturut-Turut," Kementerian Keuangan RI, *Kemenerian Kkeuangan RI*, January 2023, <https://www.kemenkeu.go.id/informasi-publik/publikasi/berita-utama/Kinerja-Penerimaan-Negara-Luar-Biasa>.

<sup>7</sup> Navis Dewi Kartiko, "Kebocoran Pajak Dan Shadow Economy Dalam Praktik Illegal Logging," in *Simposium Nasional Keuangan Negara* (Jakarta, 2020), 590–609, <https://jurnal.bppk.kemenkeu.go.id/snkn/issue/view/35>.

<sup>8</sup> Mu Fentaw, Nigatu Mengesha, and Lu Zang, "Tax Evasion, Psychological Egoism, and Revenue Collection Performance: Evidence from Amhara Region, Ethiopia, *Frontiers*, February 2023 .PP," *Frontiers in Psychology* 14 (2023): 1–15, <https://doi.org/10.3389/fpsyg.2023.1045537>.

<sup>9</sup> Fentaw, Mengesha, and Zang.

<sup>10</sup> Adi Ahdiat, "Kata Data Media Work, 2023, PDB Indonesia 2022 Tembus Rp19 Kuadriliun, Ini Sektor Penyumbangnya, <https://Databoks.Katadata.Co.Id/Datapublish/2023/02/06/Pdb-Indonesia-2022-Tembus-Rp19-Kuadriliun-Ini-Sektor-Penyumbangnya.>" Databox, 2022.

first. Then the reform took place in 2008<sup>11</sup>. Finally, in 2021, the government again initiated tax reform, marked by the accommodation of tax problems concerning job creation in Law Number 11 of 2020. The ratification of Law No. 7 of 2021 concerning the Harmonization of Tax Regulations followed the previous reform.

Even though tax law is included in state administrative law to increase compliance with tax obligations, this law is strengthened by including criminal provisions in the tax law. The criminal provisions in the tax law are a policy related to criminal violations of the tax law – the criminal provisions concern criminal acts, criminal sanctions, law enforcement procedures, and institutions. Including criminal provisions is a crucial policy of the government to increase citizens' tax compliance and treat those not obeying tax regulations. The policy provides the type of crime, sanctions, law enforcement, and legal law enforcement institutions in tax crime. According to Barda Nawawi Arief, two essential things in legal policy using criminal law are what actions could become criminal acts and what sanctions would be helpful against violators<sup>12</sup>.

Considering that the main objective of tax management is to obtain income for state finances, the perspective is effective and efficient tax management. Therefore, the resolution of various tax law violations can have the dimensions of state administrative law and criminal law. Settlement through administrative law is more oriented towards optimizing income for the state, while resolution through criminal law is more oriented towards providing harsher sanctions. Therefore, the provision of administrative sanctions still needs criminal sanctions<sup>13</sup>. This function of criminal law is known as the secondary function of criminal law, also called criminal law, as a last resort (*ultimum remedium*). Through this policy, every alleged criminal act in the field of taxation must first seek administrative resolution, namely by paying an administrative fine.

The criminal justice system can start working if an administrative resolution fails to solve the case. At this stage, it is necessary to have a criminal law policy that remains in line with tax objectives, namely state income, following existing tax potential<sup>14</sup>. There have been several changes in tax laws, and the most recent is by the Harmonization of Tax Regulations and by Job Creation Law, which was last passed as law by the DPR on 21 March. Regulations that frequently change in certain respects can result in the birth of inconsistent criminal law policies, out of synchronization and not in harmony with one another. One of the requirements for an excellent criminal law policy is a policy that is consistent, synchronous, and harmonious with one another<sup>15</sup>. Therefore, there needs to be an in-depth study regarding criminal law policies in tax law, primarily as regulated in the Law on Synchronization of Tax Regulations. This study aims to find a legal policy that can genuinely support law enforcement of tax law and support efforts to maximize state income from the tax sector. Therefore, this study will analyze the synchronization and harmonization of criminal law policies in the tax sector and how these policies support the optimization of state revenues from the tax sector.

## 2. Method

This research applied the so-called normative or doctrinal legal research using secondary data. The approach used is a statutory approach, namely by analyzing various related laws in studying legal synchronization both vertically and horizontally and using legal theories. The primary documents used are KUP Law, Tax Harmonisation Regulation, and Omnibus Law. Interviews with tax

<sup>11</sup> Fuad Bawazier, "Reformasi Pajak Di Indonesia," *Jurnal Legislasi Indonesia*, 8, no. 1 (2011): 1–28.

<sup>12</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Jakarta: Kencana Predana Media Group, 2008).

<sup>13</sup> Erja Fitria Virginia and Eko Soponyono, "Pembaharuan Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Tindak Pidana Perpajakan," *Jurnal Pembangunan Hukum Indonesia* 3, no. 3 (2021): 299–311.

<sup>14</sup> Ferdian Rinaldi, "Bekerjanya Sistem Peradilan Pidana Dalam Memberikan Kepastian Hukum Dan Keadilan," *Jurnal Hukum Respublica* 21, no. 2 (2022): 179–88.

<sup>15</sup> Khrisna Lintang and Satrio Nugroho, "Criminal Law Policy of Justice Collaborator in Corruption Crime Case," *Legal Reform* 17, no. 1 (2021): 24–35.

investigators carried empirical data to obtain data regarding implementing investigations into tax crimes, especially after enacting the Law on Harmonization of Tax Regulations.

### 3. Literature Review

#### 3.1 Definition and scope of criminal acts in the field of taxation

As an organization, a state always needs the so-called budget to finance its business. Some scholars introduced a definition of tax to describe its meaning and function. Rochmat Soemitro defines tax as Besides that, P.J. A. Adriani stated that tax is a public contribution to the state that is owed by those who are obliged to pay it according to general regulations (laws) with no return which can be directly appointed and whose purpose is to finance general expenses, due to the state's duty to organize a government <sup>16</sup>.

Meanwhile, according to N. J. Feldmann, "tax is an achievement imposed unilaterally by and owed to the authorities (according to generally determined norms) without counter-performance and is solely used for public use <sup>17</sup>." Another approach to the definition of tax is by using economic and legal aspects. The economic aspect sees that tax transfers funds from the private and public sectors or individual citizens to the government as a public representative. The legal approach finds tax as an obligation that results from laws that create a duty for citizens to surrender part of their income to the state. As an obligation, the law provides administrative or criminal sanctions for those who violate the law <sup>18</sup>.

The tax law creates new criminal acts that the Criminal Code may not have previously regulated or emphasizes acts that have existed in the Criminal Code. This criminalization arose due to developments in taxation issues, so it was necessary to designate certain acts as prohibited or further emphasize the criminal threat. Law No. 6 of 1983 concerning General Tax Provisions with all its amendments contains criminal acts in taxation. The law gives a classification of tax crime:

1. The first classification of a tax crime is based on the perpetrator. This classification consists of:
  - a. Crimes committed by the taxpayers, as regulated in Articles 38 and 39 of the KUP Law;
  - b. Crimes committed by tax officials. It is regulated in Article 41 of the KUP Law and relates to matters that must be kept confidential regarding taxpayers;
  - c. Crimes committed by third parties, as regulated in Article 41 related to Article 35, namely the obligation to provide information to some parties regarding tax audits. Those parties include taxpayer employees, consultants, lawyers, and accountants.
2. The second classification is based on the criminal intent of the perpetrator. This classification consists of crime with an element of intent and negligence. Crime with negligence, for example, is regulated in Article 39, while those with an element of negligence are in Article 38 of the KUP Law.
3. Criminal acts in the field of taxation can also be differentiated into completed criminal acts and attempted criminal acts (void crimes and poking crimes) as regulated in Article 39 paragraph (1) letter 1.
4. Article 41 of the KUP Law regulates criminal acts and complaints.

<sup>16</sup> Diana Sari, *Diana Sari, Konsep Dasar Perpajakan, Bandung, Rika Aditama, 2016, Hlm. 33* (Bandung: Rika Aditama, 2016).

<sup>17</sup> Adrian Sutedi, *Hukum Pajak* (Jakarta: Sinar Grafika, 2011).

<sup>18</sup> Santoso Brotodihardjo, *Pengantar Ilmu Hukum Pajak* (Bandung: Refika Aditama, 1986).

A detailed classification of tax crimes in the KUP Law is in Articles 38 to 43. Viewed in terms of the object or act, criminal acts in the field of taxation are:

1. Criminal acts related to Tax Returns (SPT);  
Article 38 says that an offense of negligence (*culpa*) in Tax Return. The act is negligence in submitting or submitting a Tax Return but the contents are incorrect or incomplete or attaching information whose contents are incorrect so that it can cause losses to state income. This act is after the first act, as intended in Article 13A.
2. Crimes violate the duties of a taxpayer as regulated in Article 39, such as not being registered as a taxpayer for an individual or business. Various obligations in taxation must involve an element of deliberate action as regulated in this Criminal Act as regulated in Article 39.
3. Criminal acts against the protection of tax secrets: Article 41 regulates the protection of information regarding a taxpayer's taxation, and tax officials should keep it confidential except as the law allows.
4. Crime does not provide information or evidence in taxation. Article 41A of the General Rules of Tax regulates this type of crime. This criminal offense is people obstructing the criminal justice process in taxation. The article prohibits everyone from deliberately not providing information or evidence or providing false information or evidence<sup>19</sup>.
5. The criminal act of obstructing or complicating the investigation of criminal acts in the field of taxation (obstruction of justice) in criminal acts in the field of taxation. Article 41B of KUHP Law regulates the violation of the investigation of criminal acts in the field of taxation.
6. Crime, regulated in Article 41B, refuses to provide data or information related to taxation as Article 41B regulates.

In addition to regulating criminal acts and their sanctions, the provisions in tax law also regulate the due date tax obligation, which is Article 40, which states that tax crime will expire after ten years have elapsed since the time the tax was due, the end of the period tax, the end of Part of the Tax Year, or the end of the relevant Tax Year.

Furthermore, the provisions regarding the expansion of criminal liability are extended to other parties as a representation of the Taxpayer or other parties who order, encourage, or assist others in committing tax crime, as well as those who order to commit, who advocate or assisting in committing criminal acts in the field of taxation.

### 3.2 Development of Criminal Regulations in the Taxation Sector

The urgency of taxation for the state is stated in the 1945 Constitution (UUD 1945), in Article 23A, which regulates the constitutional basis of taxation which states. After Indonesia's independence, many plow regulations still followed the rules made by the Dutch government<sup>20</sup>. Initially, tax sector regulations were administrative and only subject to administrative sanctions<sup>21</sup>. However, criminal provisions are included in the tax law to provide more coercive measures so that tax provisions are complied with. Therefore, Tax Crime Law is the administrative criminal law (administrative penal law)<sup>22</sup>.

<sup>19</sup> Nurchalis, "THE EFFECTIVENESS OF CRIMINAL SANCTION ON THE GENERAL PROVISIONS OF TAXATION IN ADDRESSING CORPORATION TAX EVASION," *Jurnal Jurnal Hukum Dan Peradilan* 7, no. 1 (2018): 23–44.

<sup>20</sup> A. Ahsin Thohari, "TAXES EPISTEMOLOGY , CONSTITUTIONAL LAW PERSPECTIVE Abstrak Pendahuluan Bentangan Sejarah Perpajakan Di Dunia Ini Menghampar Dari Zaman Piramida Di Mesir ( 3000 SM-2800 SM ), Persia ( 500 SM ), Babilonia ( 612 SM-539 SM ), Romawi ( 27 SM-476 SM ), India (," *Jurnal Legislasi Indonesia* 8, no. 1 (2011): 69–78.

<sup>21</sup> Yoserwan, "Fungsi Sekunder Hukum Pidana Dalam Penanggulangan Tindak Pidana Perpajakan," *De Jure* 20, no. 10 (2020): 165–76.

<sup>22</sup> Romli Atmasasmita and Kodra Wibowo, *Analisis Ekonomi Mikro Tentang Hukum Pidana Indonesia* (Jakarta: Kencana, 2016).



To further optimize state income and maximize income from the tax sector, the government is trying to organize legal regulations related to taxation. In 1967, with the passing of Law No. 8 of 1967 concerning Procedures for Collecting Income Tax, Wealth Tax, and Company Tax began a reasonably basic reform effort. The government then made a more systematic effort to increase income from the tax sector by carrying out tax reform, which began in 1983. Until now, the government has carried out several tax reforms.

The first reform began by issuing several laws in the field of taxation: Law No. 6 of 1983 concerning General Tax Provisions (KUP). Law No. 7 of 1983 concerns income tax, and Law No. 8 1983 concerns value-added tax and luxury goods. Then, enacting two more laws in 1985 was the next step of tax reform. They are the Law No. 12 of 1985 concerning Land and Building Tax and Law No. 13 of 1985 concerning Stamp Duty <sup>23</sup>.

The third tax reform started in 1994 by enacting Law No. 9 of 1994 concerning Amendments to Law Number 6 of 1983 concerning General Provisions and Tax Procedures (KUP), Law No. 10 of 1994 concerning Amendments to Law Number 7 of 1983 concerning Income Tax (PPh) as Amended by Law Number 7 of 1991, Law Number 11 of 1994 concerning Amendments to Law Number 8 of 1983 concerning Taxes Value Added/Sales Tax on Luxury Goods (PPN/PPnBM), and for Number 12 of 1994 concerning Amendments to Law Number 12 of 1985 concerning Land and Building Tax (PBB).

The third reform was continued by enacting several new laws in the field of taxation in 1997, namely Law Number 17 of 1997 concerning the Tax Dispute Settlement Agency, Law Number 18 of 1997 concerning Regional Taxes and Regional Retributions, Law Number 19 of 1997 concerning Tax Collection and Forced Letters, Law Number 20 of 1997 concerning Non-Tax State Revenue, Law Number 21 of 1997 concerning Fees for Acquisition of Land and Building Rights.

The fourth reform happened in 2000 by passing several laws, namely Law no. 16, 17, and 18 of 2000. At that time, refrigeration continued in 2007 and 2008, with the Law on KUP being amended by Law No. 28 of 2007, Law No. 5 of 2008, and Law No. 16 of 2009.

The reform then continued with efforts to harmonize various tax laws, marked by the passing of Law No. 7 of 2021. Furthermore, to anticipate various societal developments, the Job Creation Law regulates taxation, which was later declared to conflict with the conditional law. Next, the government proposed Government Regulation instead of Emergency Law (Perpu) No. 2 at the end of 2022. Then Congress approved the regulation to become law on 23 March 2022 with Law No. 6 of 2023 concerning Job Creation.

## 4. Result and Discussion

### 4.1 Criminal Law Policy in the Law on Harmonization of Tax Regulations

To increase state revenue from the tax sector, the government continues to improve legislation and tax services in the tax sector. This effort cannot be part of increasing state income from the tax sector to develop a just people for all the citizens. This effort also aims to uphold Indonesian citizens' and residents' rights and obligations. For this reason, a policy that includes tax is one of the manifestations of the people's duty to achieve a just and prosperous nation through development. These efforts are inseparable from achieving the state's goals through sustainable development to accelerate economic growth and support economic recovery <sup>24</sup>.

One policy that needs to be designed and implemented is a strategy consolidation by focusing on decreasing the deficit and, at the same time, improving the tax ratio. This strategy is embodied by

<sup>23</sup> Joko Santoso, "Reformasi Hukum Perpajakan Dalam Upaya Meningkatkan Penerimaan Dan Kepatuhan Wajib Pajak," *Perspektif* 26, no. 22 (2021): 110-19.

<sup>24</sup> Modesta Egiyi, "Taxation as a Significant Tool for Economic Development," *International Journal of Economics and Public Policy* 6, no. 1 (2022): 12-22.

implementing policies to improve tax revenue performance, tax administration reform, increasing the tax base, creating a tax system that prioritizes justice and legal certainty, and increasing voluntary taxpayer compliance<sup>25</sup>.

The most strategic step in implementing tax policy is through implementing a fiscal consolidation strategy that focuses on improving the budget deficit and increasing the tax ratio. For this reason, it is crucial to adjust policies in general provisions<sup>26</sup>. The two steps are implemented, among others, through policies to improve tax revenue performance, reform tax administration, increase the tax base, create a tax system that prioritizes the principles of justice and legal certainty, and increase voluntary taxpayer compliance. However, this is not enough to keep up with changes in business patterns and the dynamic dynamics of globalization and overcome existing tax aggression planning practices.

Regulations that cover General Provisions and Procedures for Taxation, Income Tax, Value Added Tax and Sales Tax on Luxury Goods, Voluntary Taxpayer Disclosure Programs, Carbon Tax, and Excise accommodate a comprehensive, consolidative, and harmonious tax policy. The substance of General Provisions and Tax Procedures contains several provisions that have accommodated, including regarding cooperation in assisting tax collection between countries, the power of taxpayers, providing data in the context of law enforcement, and cooperation in the interests of the state, and the expiry of tax criminal prosecution.

The government introduced Taxpayer Voluntary Disclosure Program material to encourage taxpayer compliance, allowing taxpayers to disclose their assets. Furthermore, new regulations regarding carbon taxes imposed on carbon emissions hurt the environment. The law also imposes a carbon tax by considering the carbon tax and market roadmap. The changes to the provisions on Excise material include adding excisable goods, the authority of Customs and Excise Officials, investigations, and payment of administrative sanctions.

One of the most critical policies in tax reform and consolidation is to use criminal law means through a criminal law policy in the field of taxation. Criminal law is an effort to provide criminal sanctions for tax law subjects who violate tax law<sup>27</sup>. Using a criminal procedure in tax law aims to increase taxpayer compliance, increasing income from the tax sector. The use of criminal law tools in tax law includes regulations regarding material criminal law and formal criminal law. Material criminal law includes determining actions categorized as criminal acts in the field of taxation and providing criminal sanctions against violators. Meanwhile, formal criminal law means determining procedures or procedures in the event of a material tax criminal law violation.

As stated in Law No. 7 of 2021 concerning Harmonization of Tax Regulations, this law aims to implement a fiscal consolidation strategy that focuses on improving the budget deficit and increasing the tax ratio. For this reason, policy adjustments would be necessary for general provisions and procedures for taxation, income tax, value-added tax, and excise, as well as regulations regarding carbon tax and policies in the form of a comprehensive voluntary taxpayer disclosure program in 1 (one) law. The word harmonization means that this law aims to harmonize various laws in the field of taxation. The law on harmonization hopes that it will create coordination in tax law enforcement toward tax optimization.

Efforts to harmonize various laws and regulations imply that there are regulations in the field of taxation that are not harmonious, meaning that there is no harmony or uniformity in tax regulations,

<sup>25</sup> Iveta Hajdúchová, Mariana Sedlia, and Igor Vizslai, "Value-Added Tax Impact on the State Budget Expenditures and Incomes," *Procedia Economics and Finance* 34, no. 15 (2015): 676–81, [https://doi.org/10.1016/S2212-5671\(15\)01685-8](https://doi.org/10.1016/S2212-5671(15)01685-8).

<sup>26</sup> Hendro Lukman, Fanny Andriani, and Setiawan Juni, "Factors Affecting Individual Taxpayer Compliance on Tax Return After Using E-Filing," *International Journal of Application on Economics and Business* 1, no. 1 (2023): 133–40.

<sup>27</sup> Bagas Pandega et al., "Kebijakan Hukum Pidana Dalam Penanggulangan Tindak Pidana Pemalsuan Uang," *Jurnal Law Reform* 11 (2015): 157–71.

including policies in the field of criminal law. The efforts will result in harmonizing various policies in the field of criminal acts and taxation.

Various criminal law policies in taxation in the Law on Harmonization of Tax Regulations (HPP) are regulated in Article 2, starting from number 11 to number 17. These provisions are related to the criminal provisions contained in the Law on General Provisions on Taxation (UU KUP), namely Law Number 6 of 1983 concerning General Provisions and Tax Procedures with all its amendments. In the regulatory stage, criminal law policy goes through the formation or reform of criminal law, either in forming material or formal criminal law norms. The formation of material criminal law norms includes selecting and determining an act deemed detrimental to society as a criminal act or delict, accompanied by the determination of sanctions for a delict violation. Meanwhile, the policy in establishing formal criminal law or criminal procedural law is an effort to enforce material criminal law by providing a series of authorities, rights, and obligations to various parties involved in a criminal justice process.

Criminal law policy in taxation as a special criminal law always experiences various changes according to the needs and conditions. Criminal law regulations in the field of taxation aim to strengthen the enforcement of tax law by providing criminal sanctions in the event of a violation of tax law. With its function to strengthen tax enforcement or compliance, criminal law is said to have a secondary function or is also known as an *Ultimum Remedium* effort after other law enforcement efforts, namely administrative law. However, criminal law policy must work against tax law violations if the primary measures do not work well.

Criminal law policy in the Law on Harmonization of Tax Regulations changes some provisions in tax law, which include:

- a. Changes to paragraph (3) of Article 34 regarding the prohibition on disclosing taxpayers' tax secrets and reasons for disclosing taxpayers' tax secrets;
- b. Changes to the provisions of Article 40 regarding tax expiration, namely after ten years;
- c. The provisions of paragraph (2) of Article 43A relate to preliminary examination as a basis for investigation;
- d. The provisions of paragraph (2) and paragraph (3) of Article 44 relating to the authority of PPNS investigators in the field of taxation;
- e. The provisions of paragraph (2) of Article 44B relate to terminating investigations and the basis for terminating investigations into criminal acts in the field of taxation;
- f. Between Article 44B- and Article 45, 2 (two) articles have been inserted, namely Article 44C and Article 44D, regarding the application of criminal fines in terminating a tax crime case.

#### **4.2 Synchronization and Harmonization of Criminal Provisions in the Law on Harmonization of Tax Regulations with the provisions of the Job Creation Law**

Tax reform efforts are a process carried out following the conditions and situations that require it. Although the Law on Harmonization of Tax Regulations tries to harmonize various tax regulations contained in various laws and regulations, these efforts continued in the Job Creation Law. One of the main objectives of the law, as contained in the Preamble to the Job Creation Law, is that with job creation, by hoping that it will be able to absorb the broadest possible workforce in Indonesia amidst increasingly competitive competition and the demands of economic globalization.

Encouraging job creation needs to simplify licensing, and this will facilitate investment and ease of doing business to encourage job creation. Related to this, what is no less important is the structuring of tax regulations to encourage the development of investment and small and medium businesses.



The general explanation of the job creation law says that changes and improvements to various related laws are needed to support the implementation of strategic job creation policies and regulations. The change should be done through an overall improvement, not partial changes. The new method will be more effective and efficient.

The scope of this law includes:

- a. improving the investment ecosystem and business activities;
- b. employment;
- c. convenience, protection, and empowerment of Cooperatives and MSMEs;
- d. ease of doing business;
- e. research and innovation support;
- f. land acquisition;
- g. economic area;
- h. central government investment and acceleration of national strategic projects;
- i. implementation of government administration, and
- j. imposition of sanctions

A critical aspect of the Job Creation Law is the imposition of sanctions. The imposition of sanctions can be in the form of administrative and criminal sanctions. The imposition of criminal sanctions is one part of criminal law policy. Therefore, Article 113 of the Job Creation Law in taxation outlines the Criminal law policy.

Article 113 provides various penal policy, which consists of the following:

- a. Amendment to Article 13A of the KUP Law by deleting the provisions of Article 13A. Article 13A of the KUP Law states that:
- b. Amendment to Article 38 of the KUP Law.
- c. Similar to the provisions of Article 13A, Article 38 is a further regulation of the imposition of criminal penalties for negligence in submitting SPT. Amendment to article 44B
- d. This article regulates the termination of investigations into tax crimes. The changes include Article 113, number 16 of the Job Creation Law
- e. Article 44B of the KUP Law states regarding the termination of investigations

### **4.3 Criminal Law Policy in the Tax Harmonization Law Supports Increasing State Revenue from the Tax Sector**

The development of law and the legal system, including criminal law, cannot be separated from legal politics. Political law is a legal policy or direction the state will implement to achieve state goals, which can take the form of making new laws and replacing old ones. The understanding stated above is very limited to the meaning of legal formation, especially by legislative institutions. For this reason, there is a difference between legal politics and legal, political science, which not only concerns the official direction of the law that is enforced but also concerns various matters related to that official direction, for example, the political background, the legal culture that surrounds it and the enforcement problems faced<sup>28</sup>.

Legal policy consists of first the official directions regarding laws that will or will not be enforced (legal policy) to achieve state goals, including replacing the law. The second is the political background and other societal subsystems behind the birth of the law, including the official direction

<sup>28</sup> Ega Rijal Mahardika and Muhammad Azhar Bayu, "Legal Politics of Indonesian Environmental Management : Discourse between Maintaining Environmental Sustainability and Economic Interests," *Indonesian Journal of Environmental Law and Sustainable Development* 1, no. 1 (2022): 1-28.

regarding the law's enforcement. Third, there are problems surrounding law enforcement, especially the implementation of established legal politics<sup>29</sup>.

The term criminal law politics in studying criminal law is also called criminal law policy. The term criminal law politics comes from either penal or criminal law policy.

Quoting Sudarto's opinion, legal politics is:

- a. Effort to create reasonable regulations according to the circumstances and situations at a particular time;
- b. State policy through an authorized body to establish the desired regulations which would express society's interest and to achieve what is aspired<sup>30</sup>.

From this understanding, Sudarto stated that criminal law politics is an effort to create criminal legislation appropriate to the circumstances and situations at once and for some time in the future. Meanwhile, A. Muder stated that criminal law politics is a policy line to determine:

- a. How far the criminal law provisions need to be changed or updated;
- b. How to prevent criminal acts;
- c. How investigation, prosecution, trial, and criminal execution must occur<sup>31</sup>.

The abovementioned explains that criminal law politics, as a process for selecting, determining, and implementing criminal law, always develops following the development of society. Legal politics is the basis for the formation of formal norms.

Overall, tax reform is an effort to increase revenue from the tax sector. This effort is part of a series of policies in the tax sector. Considering Law No. 7 concerning HPP, enacting the Tax Reform Law aims to increase sustainable economic growth and accelerate economic recovery. Meanwhile, the strategy implemented is through fiscal consolidation, which focuses on improving budget deficits and increasing the tax ratio, which is carried out, among other things, through implementing policies to increase tax revenue performance, tax administration reform, increasing the tax base, creating a tax system that prioritizes the principles of justice and legal certainty, as well as increasing voluntary taxpayer compliance. Criminal sanction is an effort to increase tax compliance by threatening because one of the functions of criminal law is crime prevention, whether general or specific. Even criminal sanctions may deter people from committing a criminal act.

Furthermore, in the consideration, it was stated that in order to implement a fiscal consolidation strategy that focuses on improving the budget deficit and increasing the tax ratio as intended in letter b, it is necessary to adjust policies in the areas of general provisions and procedures for taxation, income tax, value added tax and excise as well as regulations regarding carbon tax and policies in the form of a comprehensive taxpayer voluntary disclosure program in 1 (one) law.

Various statutory regulation improvements would further increase taxpayer compliance with the objectives and strategies. This strategy would increase income from the tax sector, primarily by increasing the people's investment income.

This consolidative fiscal policy can be embodied by taking strategic steps that focus on improving the budget deficit and increasing the tax ratio, including through implementing policies to increase tax revenue performance, tax administration reform, increasing the tax base, creating a tax system that prioritizes the principles of justice and legal certainty, as well as increasing voluntary taxpayer

<sup>29</sup> Wahyu Prijo Djatmiko, "Legal Policy and Its Position in the Taxonomy of Science," *Jurnal Dinamika Hukum* 18, no. 1 (2018): 123-30.

<sup>30</sup> Debby Khoirunisa and Indra Yudha Koswara, "REFORM OF THE CRIMINAL LAW OF ACTIONS ABOUT THE THE MISUSE OF FIRE WEAPONS IN INDONESIA," *HERMENEUTIKA* 7, no. 1 (2023): 21-27.

<sup>31</sup> Muladi and Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Hukum Pidana* (Bandung: Alumni, 2010).

compliance. At the global level, countries are also implementing various tax policies. The goal is to increase revenue by expanding the tax base and adjusting tax rates.

In order to increase the tax ratio, the government has made various efforts, including tax reform, which focuses on organizations, human resources, data-based information technology, business processes, and tax regulations<sup>32</sup>. This policy is carried out, among other things, by improving service functions, implementing the Tax Amnesty program, implementing the Automatic Exchange of Financial Account Information scheme, strengthening the effectiveness of the extensification function, and law enforcement. However, this is not enough to compensate for changes in business patterns and the dynamic dynamics of globalization and overcome existing tax aggression planning practices.

Therefore, in line with continuous tax reform, especially in aspects of regulations and business processes, it is necessary to adjust tax policy arrangements that are comprehensive, consolidative, and harmonious so that it is necessary to form a Law on the Harmonization of Tax Regulations. This adjustment to policy settings aims to increase sustainable economic growth and support the acceleration of economic recovery; optimize state revenues to finance national development independently towards a just, prosperous, and prosperous Indonesian society; realizing a taxation system that is more just and has legal certainty; implementing administrative reform, consolidated tax policy, and expanding the tax base; and increasing voluntary taxpayer compliance.

Tax policies that are comprehensive, consolidative, and harmonious are performed through regulations covering General Provisions and Procedures for Taxation, Income Tax, Value Added Tax and Sales Tax on Luxury Goods, Voluntary Taxpayer Disclosure Programs, Carbon Tax and Excise.

## 5. Conclusion

The background of the Law on Harmonization of Tax Regulations is to provide a better atmosphere for investment to create more jobs for citizens. The criminal law policy in the Law on Harmonization of Tax Regulations prioritizes the administrative resolution of criminal cases in the tax sector. It vigorously protects the secrets and information concerning taxpayer tax. The law also provides more possibilities not to bring a criminal case to a criminal justice system but to prioritize stopping the investigation as long as the perpetrator or the accused can pay the tax loss and the administrative fines. The law avoids criminal punishment if the perpetrator has assets to freeze and confiscate. In general, this policy will provide an opportunity to provide more tax income through administrative fines. However, on the other hand, by prioritizing administrative solutions, the role of criminal sanctions as a deterrent can be minimized so that, on the contrary, it can reduce taxpayer compliance. Even though the criminal law policy of the Law on Harmonization of Tax Regulations places criminal procedures and or criminal sanction as secondary procedures, criminal procedure or criminal sanction should become the primary option in solving tax crime as long as the perpetrator has malicious intent in doing tax evasion or tax avoidance.

## BIBLIOGRAPHY

- Adiyanta, F C Susila. "Karakteristik Responsif Peraturan Daerah Tentang Pajak-Pajak Daerah Sebagai Representasi Dan Partisipasi Kehendak Publik." *Administrative Law & Governance Journal* 2, no. 3 (2019): 380-99.
- Ahdiat, Adi. "Kata Data Media Work, 2023, PDB Indonesia 2022 Tembus Rp19 Kuadriliun, Ini Sektor Penyumbangnya, <https://Databoks.Katadata.Co.Id/Datapublish/2023/02/06/Pdb-Indonesia-2022-Tembus-Rp19-Kuadriliun-Ini-Sektor-Penyumbangnya>." Databox, 2022.
- Atmasasmita, Romli, and Kodra Wibowo. *Analisis Ekonomi Mikro Tentang Hukum Pidana Indonesia*. Jakarta: Kencana, 2016.

<sup>32</sup> Lukman, Andriani, and Juni, "Factors Affecting Individual Taxpayer Compliance on Tax Return After Using E-Filing."

- Barda Nawawi Arief. *Bunga Rampai Kebijakan Hukum Pidana*. Jakarta: Kencana Predana Media Group, 2008.
- Bawazier, Fuad. "Reformasi Pajak Di Indonesia." *Jurnal Legislasi Indonesia*, 8, no. 1 (2011): 1–28.
- Brotodihardjo, Santoso. *Pengantar Ilmu Hukum Pajak*. Bandung: Refika Aditama, 1986.
- Djarmiko, Wahyu Prijo. "Legal Policy and Its Position in the Taxonomy of Science." *Jurnal Dinamika Hukum* 18, no. 1 (2018): 123–30.
- Egiyi, Modesta. "Taxation as a Significant Tool for Economic Development." *International Journal of Economics and Public Policy* 6, no. 1 (2022): 12–22.
- Fentaw, Mu, Nigatu Mengesha, and Lu Zang. "Tax Evasion, Psychological Egoism, and Revenue Collection Performance: Evidence from Amhara Region, Ethiopia, February 2023 .PP." *Frontiers in Psychology* 14 (2023): 1–15. <https://doi.org/https://doi.org/10.3389/fpsyg.2023.1045537>.
- Gaspar, Vitor, Laura Jaramillo, and Philippe Wingender. "Political Institutions , State Building , and Tax Capacity : Crossing the Tipping Point." 233, 2016. <https://doi.org/https://doi.org/10.5089/9781475558142.001>.
- Hajdúchová, Iveta, Mariana Sedlia, and Igor Viszlai. "Value-Added Tax Impact on the State Budget Expenditures and Incomes." *Procedia Economics and Finance* 34, no. 15 (2015): 676–81. [https://doi.org/10.1016/S2212-5671\(15\)01685-8](https://doi.org/10.1016/S2212-5671(15)01685-8).
- Kartiko, Navis Dewi. "Kebocoran Pajak Dan Shadow Economy Dalam Praktik Illegal Logging." In *Simposium Nasional Keuangan Negara*, 590–609. Jakarta, 2020. <https://jurnal.bppk.kemenkeu.go.id/snkn/issue/view/35>.
- Kemenkeu. "Kinerja Penerimaan Negara Luar Biasa Dua Tahun Berturut-Turut," *Kementerian Keuangan RI.* *Kemenerian Kkeuangan RI*. January 2023. <https://www.kemenkeu.go.id/informasi-publik/publikasi/berita-utama/Kinerja-Penerimaan-Negara-Luar-Biasa>.
- Khoirunisa, Debby, and Indra Yudha Koswara. "REFORM OF THE CRIMINAL LAW OF ACTIONS ABOUT THE THE MISUSE OF FIRE WEAPONS IN INDONESIA." *HERMENEUTIKA* 7, no. 1 (2023): 21–27.
- Lintang, Khrisna, and Satrio Nugroho. "Criminal Law Policy of Justice Collaborator in Corruption Crime Case." *Legal Reform* 17, no. 1 (2021): 24–35.
- Lukman, Hendro, Fanny Andriani, and Setiawan Juni. "Factors Affecting Individual Taxpayer Compliance on Tax Return After Using E-Filing." *International Journal of Application on Economics and Business* 1, no. 1 (2023): 133–40.
- Mahardika, Ega Rijal, and Muhammad Azhar Bayu. "Legal Politics of Indonesian Environmental Management : Discourse between Maintaining Environmental Sustainability and Economic Interests." *Indonesian Journal of Environmental Law and Sustainable Development* 1, no. 1 (2022): 1–28.
- Muladi, and Barda Nawawi Arief. *Teori-Teeori Dan Kebijakan Hukum Pidana*. Bandung: Alumni, 2010.
- Mustaqiem. *Perpajakan Dalam Konteks Teori Dan Hukum Pajak Di Indonesia*. Yogyakarta: Buku Litera, 2014.
- Nguyen, Hoa Thi, Susilo Nur, and Aji Cokro. "The Impacts of Tax Revenue and Investment on the Economic Growth in Southeast Asian Countries." *Journal Accounting and Investment* 23, no. 1 (2022): 128–46. <https://doi.org/10.18196/jai.v23i1.13270>.
- Nurchalis. "THE EFFECTIVENESS OF CRIMINAL SANCTION ON THE GENERAL PROVISIONS OF TAXATION IN ADDRESSING CORPORATION TAX EVASION." *Jurnal Jurnal Hukum Dan Peradilan* 7, no. 1 (2018): 23–44.
- Pandega, Bagas, Hariyanto Putro, Eko Soponyono, Program Studi, Magister Ilmu, Fakultas Hukum,

- Universitas Diponegoro, and Pemalsuan Uang. "Kebijakan Hukum Pidana Dalam Penanggulangan Tindak Pidana Pemalsuan Uang." *Jurnal Law Reform* 11 (2015): 157-71.
- Rinaldi, Ferdian. "Bekerjanya Sistem Peradilan Pidana Dalam Memberikan Kepastian Hukum Dan Keadilan." *Jurnal Hukum Respublica* 21, no. 2 (2022): 179-88.
- Santoso, Joko. "Reformasi Hukum Perpajakan Dalam Upaya Meningkatkan Penerimaan Dan Kepatuhan Wajib Pajak." *Perspektif* 26, no. 22 (2021): 110-19.
- Sari, Diana. *Diana Sari, Konsep Dasar Perpajakan, Bandung, Rika Aditama, 2016, Hlm. 33*. Bandung: Rika Aditama, 2016.
- Soemitro, Rochmat. , *Dasar-Dasar, Hukum Pajak Pendapatan*,. Jakarta: Salemba Empat, 2007.
- Sutedi, Adrian. *Hukum Pajak*. Jakarta: Sinar Grafika, 2011.
- Thohari, A. Ahsin. "TAXES EPISTEMOLOGY , CONSTITUTIONAL LAW PERSPECTIVE Abstrak Pendahuluan Bentangan Sejarah Perpajakan Di Dunia Ini Menghampar Dari Zaman Piramida Di Mesir ( 3000 SM-2800 SM ), Persia ( 500 SM ), Babilonia ( 612 SM-539 SM ), Romawi ( 27 SM-476 SM ), India (." *Jurnal Legislasi Indonesia* 8, no. 1 (2011): 69-78.
- Virginia, Erja Fitria, and Eko Soponyono. "Pembaharuan Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Tindak Pidana Perpajakan." *Jurnal Pembangunan Hukum Indonesia* 3, no. 3 (2021): 299-311.
- Yoserwan. "Fungsi Sekunder Hukum Pidana Dalam Penanggulangan Tindak Pidana Perpajakan." *De Jure* 20, no. 10 (2020): 165-76.