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## APPLICATION OF CRIMINAL LAW AS AN *ULTIMUM REMEDIUM* IN TAXATION CASES POST THE APPLICATION OF LAW NUMBER 7 OF 2021 ON TAX REGULATIONS HARMONIZATION

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### ABSTRACT

*Countries that have stable economic strength can be classified as large countries. However, the existence of stable economic strength and prosperity depends on the level of public awareness in paying tax obligations. The challenge presented in this research is to figure out how criminal law is applied as an *Ultimum Remedium* in tax cases after the enactment of Law number 7 of 2021 on Tax Regulations Harmonization in 56 criminal verdicts in tax cases that occurred between 2022-2023. The research method used is literature study (Library Research) with a Normative Juridical perspective, and a qualitative analysis explained in a descriptive way. The results of the research show that based on criminal verdicts in tax cases that have gone through judiciary and was decided from 2022 to 2023 after the enactment of Law number 7 of 2021 on Tax Regulations Harmonization, the panel of judges did not implement the *Ultimum Remedium* principle as a legal consideration in imposing sanctions criminal sentence for perpetrators of tax crimes. The principle of *Ultimum Remedium* contained in article 44B Law number 7 of 2021 on Tax Regulations Harmonization indicates that only fines should be applied as the final sentence without any prison/imprisonment sentence. Therefore, in the case of the fine not being paid within the specified time period; the perpetrator's assets must be confiscated or blocked. Therefore, state officials who exercise judicial power need to pay attention to aspects of justice being based on the aim of returning state losses that could be achieved in accordance with the aim of *Ultimum Remedium* principle in Law number 7 of 2021 on Tax Regulations Harmonization.*

**Keywords:** *Ultimum Remedium, Tax Crime, Tax Harmonization Law*

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### INTRODUCTION

Economic strength in a country is a means of realizing the welfare of its people. A stable economy and progress in life depend on the level of public awareness, one of which is paying tax obligations. Tax collection in Indonesia is included In Article 23A of the 1945 Constitution, it is stated that the implementation of state tax collection is carried out by the government as a state administrator from both the central and regional levels in order to improve the welfare of the community.<sup>1</sup>

Tax according to Law number 28 of 2007 on General Provisions and Tax Procedures is a mandatory payment made by a person or an entity to the government that is owed based on compelling legal requirements without receiving direct payment as a perquisite. Collections are used for government purposes and the welfare of citizens, where taxes in Indonesia cover 80% of the entire state income.<sup>2</sup>

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<sup>1</sup>Afiyati, R., Sudarsono, Negara, T. A. S., & Koeswahyono, I. (2022). Tax dispute settlement mediation arrangements in the future tax court. *International Journal of Research in Business and Social Science* (2147- 4478), 11(5). p. 503.

<sup>2</sup>Putra, A. F., & Osman, A. H. (2019). Tax compliance of MSME's taxpayer: Implementation of theory of planned behavior. *Journal of Contemporary Accounting*, 1(1). p. 1.

Every tax contribution collected in Indonesia must refer to the law, and is a union which cannot be separated from the affirmation of the Indonesian state as a legal state.<sup>3</sup> Taxes are a form for building and increasing the economic strength of a country. In this case it can be said that taxes are a core component of a country's total income. If the taxpayer does not complete his tax obligations based on the regulations governing the applicable laws, Taxpayers can be given sanctions.<sup>4</sup>

One of the fundamental changes following the implementation of tax reform in Indonesia is the change in the tax collection system, from Official Assessment System (OAS) to Self-Assessment System (SAS). As a result of changes to the tax collection system, there has been a shift in taxation activities. During the process of implementing tax obligations, there is the possibility of taxation dispute between the Government and Taxpayers. These taxation disputes can arise, among other things, because of differences in opinions between taxpayers and the government regarding the amount of tax to be paid.<sup>5</sup>

With the self-assessment system, taxpayers receive complete information about how to determine, pay taxes required by law and submit the necessary documents to the government in accordance with applicable laws and regulations.

Tax law is a set of rules that regulate the relationship between taxpayers and the government as tax collectors which contains rights and obligations. Tax law is public law, in which there are regulations that regulate the relationship between individuals and legal entities or the state. To ensure public welfare, tax regulations regulate tax matters that will reduce the costs of product production and services.<sup>6</sup> The act of refusing to pay tax obligations, tax evasion or refusal to pay tax by taxpayers is an illegal act or a violation of law. Taxpayers will bear the consequences if they do not pay their taxes as required by statutory regulations.<sup>7</sup>

Taxpayers who ignore or violate applicable tax provisions will be subject to sanctions. Sanctions are actions taken in retaliation against people who violate the law. There are three categories of administrative sanctions based on Law number 16 of 2009, namely interest, fines and tax increase. The interest sanction in question is the interest charged when no payments are made on tax dues that are left to grow. The interest amount is calculated based on a certain percentage of the tax principal. Meanwhile, the fine sanction referred to consists of a fine that is applied caused by a violations of tax regulations where the amount of the fine is determined from a certain amount or a percentage of a certain specific amount. Tax increase in question is a sanction imposed on taxpayers who do not submit data needed to justify it the amount of tax owed and caused the country to suffer loss. Taxpayers will then be impose sanctions where the amount of tax owed can be doubled.<sup>8</sup>

According to Law number 16 of 2009, the types of criminal sanctions are divided into three: fines, confinement and imprisonment. These sanctions will be imposed on taxpayers, government officials, or third parties who intentionally and criminally violate tax regulations. Administrative fines imposed on taxpayers in accordance with tax regulations are not the same

<sup>3</sup> Bolifaar, A. H., Dianto, H., & Sinaga, P. (2020). Managing Evidence of Tax Crime in Indonesia: An Artificial Intelligence Approach in Integrated Criminal Justice System. *AYER Journal*, 27(1). P. 148.

<sup>4</sup> Mustafidah, N. (2023). "Determinan Penghindaran Pajak Di Masa Pandemi Covid-19 Studi Pada Perusahaan Terdaftar Di Bursa Efek Indonesia (BEI)", *Doctoral dissertation*. Universitas Islam Sultan Agung Semarang. p.1.

<sup>5</sup> Ispriyarso, B., & Saadah, N. (2019). Independence and procedures of tax dispute resolution institutions in Indonesia and East Asian countries. *International Journal of Innovation, Creativity and Change*, 10(2). p.109.

<sup>6</sup> Suwadi, P., Halawa, R. M., Rukmono, B. S., & M, A. P. E. (2017). Model Of Termination Of Tax Criminal Actions In Benefit Principle And Legal Justice. *BiLD Law Journal*. p. 148

<sup>7</sup> Mutia, S. P. T. (2014). Pengaruh sanksi perpajakan, kesadaran perpajakan, pelayanan fiskus, dan tingkat pemahaman terhadap kepatuhan wajib pajak orang pribadi (Studi Empiris pada Wajib Pajak Orang Pribadi yang terdaftar di KPP Pratama Padang). *JURNAL AKUNTANSI*, 2(1). p. 5.

<sup>8</sup> Fatimah, S., & Wardani, D. K. (2017). Faktor-Faktor Yang Mempengaruhi Penggelapan Pajak Di Kantor Pelayanan Pajak Pratama Temanggung, 1(1). p.3.

as criminal fines. Administrative fines can also be imposed on officials or other third parties who violate the law by committing criminal acts that fall within the definition of violation or crime. Imprisonment is a sanction that deprives a person of their freedom and is aimed at criminals. This prison sentence can only be imposed on taxpayers or officials.<sup>9</sup>

Based on the provisions of tax law sanctions, administrative sanctions should take priority over criminal sanctions. This is done with the aim of realizing the welfare and justice of the Indonesian public. The *Ultimum Remedium* principle was introduced into Indonesian tax law through the birth of Law number 7 of 2021, often called the Law on Tax Regulations Harmonization.<sup>10</sup>

Basically, Law number 7 of 2021 changes and discusses six scopes including:

- (1) General Provisions and Tax Procedures,
- (2) Income Tax,
- (3) Value Added Tax and Sales Tax on Luxury Goods,
- (4) Voluntary Disclosure Program,
- (5) Carbon Tax, and
- (6) Excise.

Then in Law number 7 of 2021 the principle of *Ultimum Remedium* is stated in Article 44B section 2(a) and section 2(b) which reads:

Section 2(a): "The defendant is still allowed to make payments if the criminal case has been transferred to court:

- a. Administrative sanctions are the sum of state revenue losses as intended in section (2) letter a or letter b; or
- b. Proof of withholding, tax invoice dues, proof of tax deposit, and/or proof of tax collection plus administrative fines as intended in section (2) letter c."

Section 2(b): "Payment to completion as intended in section (2a), is a justification for the sanction without imprisonment."

From the verses above it can be interpreted that taxpayers who do not carry out their obligations in taxation will be given sanctions starting from administrative sanctions and then criminal sanctions as a last resort. Criminal sanctions were initially threats as a final measure in the field of taxation (*Ultimum Remedium*) in an effort to improve mandatory compliance regarding taxes with tax revenue targets.<sup>11</sup>

After the enactment of Law number 7 of 2021 on Tax Regulations Harmonization, the law impacted the application of sanctions by Court Judges for non-tax criminal sanctions that occur. The fact is that in case number 224/Pid.Sus/2022/PN.Tpg, the defendant Leo Ricky as Director was charged by the Public Prosecutor of the Tanjung pinang District Court for deliberately not disclosing the taxes withheld or collected, thereby increasing the risk of loss of state revenue in the amount of Rp. 338.333.967 (three hundred thirty-eight million three hundred thirty-three thousand nine hundred and sixty-seven rupiah). For his actions, the judge at the Tanjung pinang District Court announced a decision which revealed that the defendant has legally and been proven to have committed a crime in his actions causing a tax crime and the court imposed a fine on the defendant in the amount of IDR 1.353.335.868 (one billion three hundred and fifty-three million three hundred and thirty five thousand eight hundred and

<sup>9</sup>Virginia, E. F., & Sopyonyono, E. (2021). Pembaharuan Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Tindak Pidana Perpajakan. *Jurnal Pembangunan Hukum Indonesia*, 3(3). p.309.

<sup>10</sup>Hany, S. P., Mahandito, T., Alsilana, V., Nafi'ah, Z. Z., & Irawan, F. (2023). Pengaruh Keringanan Sanksi Administrasi Undang-Undang Harmonisasi Peraturan Perpajakan terhadap Kepatuhan Wajib Pajak. *Jurnalku*, 3(2). p.180.

<sup>11</sup>Noor, R. S. (2023). *The Process of Tax Criminal Actions in the Semarang State Court*. Atlantis Press SARL. [https://doi.org/10.2991/978-2-38476-074-9\\_38](https://doi.org/10.2991/978-2-38476-074-9_38).

sixty eight rupiah), and if the defendant pays the fine, then no imprisonment will befall the defendant thereafter.

Based on this, criminal tax case sanctions in accordance with the principle of *Ultimum Remedium* have already been applied by District Court judges in their sanctions in 2022. This study aims to determine the use of criminal law as a last resort in prosecuting taxation cases after the enactment of Law number 7 of 2021 on Tax Regulations Harmonization.

## METHOD

This research was carried out by means of a literature review that applies normative juridical research methods, namely describing the facts collected in accordance with legal doctrine, regulations and norms relating to the research subject. The problem that will be studied is the application of the *Ultimum Remedium* principle which occurred after the enactment of Law number 7 of 2021 on Tax Regulations Harmonization towards criminal tax penalties. The research perspective is a descriptive approach, namely presenting the reality of the data obtained behind the symptoms that occur in depth, detail and in accordance with the theory and applicable laws. Techniques for obtaining data by studying books, literature, accredited journals, which are related to the problem by looking at the laws governing said problem as a research reference.<sup>12</sup> The data obtained comes from the District Court Decision which handles Special Crimes in the field of Taxation that occurred in Indonesia from 2022 to 2023 in accordance with the enactment of Law number 7 of 2021 on Tax Regulations Harmonization.

## ANALYSIS AND DISCUSSION

### Tax and Law Number 7 of 2021 on Tax Regulations Harmonization

According to the KBBI, tax is mandatory financial cost that citizens must share with the government or country where they live, based on income, ownership and other factors. According to Law number 28 of 2007 on General Provisions and Procedures for Taxation, tax is a mandatory payment owed to the government without any imbalance in any form by an individual or entity subject to legal coercion. Tax revenues are used to meet government needs for the greatest welfare of the people. Another way to look at it is that taxes are a type of levy levied on people, with the aim of making them more prosperous.<sup>13</sup>

Tax is a monetary obligation imposed by the government on taxpayers with the aim of covering certain government expenditures. From the several definitions of tax stated above, it can be concluded that tax is a mandatory levy by the people of a coercive nature on a country which functions to support the progress of that country's development.

A more just tax system, faster economic recovery, more voluntary taxpayer compliance, and more sustainable economic growth are the goals of Law number 7 of 2021 on Tax Regulations Harmonization. Law number 7 of 2021 on Tax Regulations Harmonization was formulated to replace several existing laws, including:<sup>14</sup>

- a. Law Number 6 of 1983 on General Provisions and Tax Procedures.
- b. Law Number 7 of 1983 on Income Tax
- c. Value Added Tax on Goods and Services and Sales Tax on Luxury Goods, as stated in Law Number 8 of 1983.

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<sup>12</sup>Siregar. (2019). Strategi dan teknik penulisan karya tulis ilmiah dan publikasi. *Deepublish*.

<sup>13</sup>Halim Abdul. (2014). *Perpajakan Konsep, Aplikasi, Contoh, dan Studi Kasus*. Jakarta Selatan: Salemba Empat.

<sup>14</sup>CPC. <https://peraturan.bpk.go.id/Details/185162/uu-no-7-tahun-2021> . Access October 21, 2023.

- d. Law Number 11 of 1995 on Excise.
- e. Amendments to Law Number 11 of 1995 on Excise .
- f. Fourth Amendment to Law Number 7 of 1983 on Tax Income as regulated in Law Number 36 of 2008.
- g. As a replacement for Law Number 5 of 2008 on the Fourth Amendment to Law Number 6 of 1983 on General Provisions and Tax Procedures Becoming Law, and there is a new law, namely Law Number 16 of 2009 which regulates government regulations.
- h. In regards to the Third Amendment to Law Number 8 of 1983 on Value Added Tax on Goods and Services and Sales Tax on Luxury Goods, Law Number 42 of 2009 was enacted.
- i. PERPU Number 1 of 2020 on State Financial Policy and Financial System Stability in the Context of Facing Threats to the National Economy and/or Financial System Stability and/or Handling the 2019 Corona Virus Disease (COVID-19) Pandemic.
- j. In the context of handling the 2019 Corona Virus Disease (Covid-19) pandemic and/or in order to ward off threats to the national economy and/or financial system stability, Law Number 2 of 2020 on the Stipulation of Government Regulations in Lieu of Law Number 1 of 2020 on State Financial Policy and Financial System Stability into law.

Law number 7 of 2021 on Tax Regulations Harmonization consisting of Income Tax (PPh), Value Added Tax and Luxury Goods Sales Tax (PPN & PPnBM), Excise, Voluntary Disclosure Program (PPS), Carbon Tax, as well as General Provisions and Taxes Procedures (KUP) are six themes that are considered and revised in this regard.

#### **Principles of *Ultimum Remedium* and *Primum Remedium* in Tax Crimes**

The principle of final resolution serves as a last resort to change people's behavior, especially criminal activity, and to exert psychological pressure on others to refrain from committing crimes. Due to the severity of the sanctions imposed, the use of criminal law is minimized, in other words, it is only used when no other legal remedies are available. The reference for applying the *Ultimum Remedium* principle lies in article 44B paragraph 2(a) and paragraph 2(b) of Law number 7 of 2021 on Tax Regulations Harmonization which reads:<sup>15</sup>

Section 2(a): "The defendant can still make payments even if the criminal case has been submitted to court:

- a. administrative sanctions plus a reduction in state income as intended in section (2) letter a or letter b; or
- b. the amount of tax stated on the tax invoice, along with supporting documents withholding, collection or remittance of tax, as well as administrative sanctions as intended in section (2) letter c."

Section 2(b): "The money as referred to in section (2a) becomes an imbalance of action without being sentenced to prison."

Meanwhile, the *Primum Remedium* principle aims to use sanctions as the main instrument to prevent criminal acts from occurring, both among people in society and in general, so that they do not commit crimes.<sup>16</sup> Based on Law number 8 of 2007 *Primum Remedium* principles are found in :

Article 38: Persons who, due to negligence:

- a. Do not submit SPT; or
- b. submitting an incomplete or incorrect SPT, or sending an incorrect letter of explanation attached.

<sup>15</sup>Suryaman, D. (2021). *Reformulation of Objections, Appeals, And Suits on Taxes and Other Compelling Levies in Indonesia*. <https://doi.org/10.4108/eai.14-4-2021.2312293>

<sup>16</sup>*Ibid*.

Therefore, will be imprisoned for a minimum of three months or a maximum of one year, or will be fined 1 (one) time the amount of tax owed and a maximum of 2 (two) times the amount of tax owed.

Article 39 Section 1: That every person who intentionally:

- a. Do not submit SPT;
- b. submitting SPT and/or information whose contents are incorrect/incomplete.

Those who violate are threatened with imprisonment for a minimum of 6 (six) months and a maximum imprisonment of 6 (six) years, as well as a fine of at least 2 (two) times the amount of tax owed and a maximum fine of 4 (four) times.

From the verses above it can be interpreted that tax crimes can be resolved by being given a fine without any prison sanctions. Imprisonment sanctions can be the final sanction if all means of sanctions for violators and perpetrators of tax law crimes cannot be met. As a last resort, it can also be said that taxpayers who do not comply with their tax obligations will face sanctions ranging from administrative to criminal sanctions.<sup>17</sup>

The purpose of the *Ultimum Remedium* principle in tax laws and regulations is to maintain the economic element of state revenue. So that the criminal formulation that imposes a violation of tax regulations into a fine and imprisonment is considered as a last resort criminal measure against violators of tax regulations (Achmad, 2016). This research will carry out research with the theme "Application of Criminal Law As An *Ultimum Remedium* In Taxation Cases Post the Application Of Law Number 7 Of 2021 on Tax Regulations Harmonization."

### **Tax Justice Theory**

In order for the taxes collected to be fair and equitable, the government's efforts in collecting money from the public must adhere to the principle of justice (equality). Regarding tax collection from individuals, of course it must be combined with their ability to pay and in accordance with the profits they receive from the state. To be fair, one must possess impartiality, truth, and justice. The imposition of taxes on society will of course hinder Indonesia's progress, because taxes are the main source of state income. However, individuals who feel that the tax rate is excessive will also have difficulty paying their taxes. Therefore, imposing taxes on the general public is a difficult task.<sup>18</sup>

The idea of fairness or equality is one of the three main principles of the tax system, according to Leon (1998). According to the principle of fairness or justice (also called theoretical justice), the amount of tax owed must be in accordance with the taxpayer's ability to pay taxes.<sup>19</sup>

The law and the method of collection must be equally fair in order to achieve the goal of the law, namely obtaining justice. To be fair, taxes must be applied broadly, fairly, and in accordance with each person's income. Meanwhile, giving taxpayers the opportunity to voice their disappointment through payment delays and appeal to a higher court is necessary to ensure that this is implemented fairly.

Justice and law must go hand in hand. Van de Barge believes that the standard of justice is that in order for taxes to be collected, the requirements of justice must also be met because they are based on a legal framework that can be applied in people's daily activities.<sup>20</sup> Fairness in tax collection and imposition is thought to have a significant influence on taxpayers' compliance towards paying their tax dues. Taxpayers will pay taxes dutifully if they believe that they receive fair treatment from the government in terms of taxing their income, and they are less

<sup>17</sup> Hasibuan, S. (2015). Asas *Ultimum Remedium* dalam Penerapan Sanksi Pidana terhadap Tindak Pidana Perpajakan Oleh Wajib Pajak. *USU Law Journal*. p.115-125.

<sup>18</sup> Diana Sari. (2013). *Konsep Dasar Perpajakan*. Bandung: PT.Refika Aditama.

<sup>19</sup> Burnama, I. (2022). Aspek Keadilan Aturan Pajak Indonesia dalam mengatur transaksi Ekonomi Digital: Respon atas Investigasi USTR. *SCIENTAX: Jurnal Kajian Ilmiah Perpajakan Indonesia*, 4(1), p.68.

<sup>20</sup> Najmuddin N. (2012). Paradigma baru hukum perpajakan Indonesia. *Delta Teknologi*

likely to commit tax evasion if they believe that what they pay is equivalent to what they receive.<sup>21</sup>

### **Verdicts on Tax Criminal Cases Post-Law Number 7 of 2021 on Tax Regulations Harmonization**

Any unlawful act committed by a taxpayer (individual or entity) which has the potential to reduce state revenues from the taxation sector is considered a tax crime. The emergence of tax crimes in a country cannot be separated from the symptoms or conditions within its society which is related to legal obligations, because basically taxes are a symptom of society. Based on several studies of tax crime cases, there are those that criticize the dominance of legal positivism in Indonesia and the dualism of tax avoidance showed the inconsistency in the application of criminal acts in the field of taxation in the application of *ultimum remedium* as the final alternative solution. Tax crimes are divided into two, namely negligence (violation) and intention (crime).<sup>22</sup>

After the enactment of Law Number 7 of 2021 on Tax Regulations Harmonization, there have been 53 Verdicts on Tax Crime Cases from the First Level District Court to the sentence at the last legal challenge, namely through Cassation at the Supreme Court, which was included in the chronology of criminal sanctions in tax cases.

After enacting Law Number 7 of 2021 on Tax Regulations Harmonization which has an impact on the application of sanctions by Court Judges for non-criminal tax cases that occurs. Below, the author describes in the form of a chart the final sentence from the Panel of Judges which has reached the highest stage of legal action, namely cassation regarding sanctions or final punishment which releases the defendant for tax crimes committed from 2022 to August 2023 after Law Number 7 of 2021 on Tax Regulations Harmonization comes into effect.

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<sup>21</sup>Fatimah, S., & Wardani, D. K. (2017). Faktor-Faktor Yang Mempengaruhi Penggelapan Pajak Di Kantor Pelayanan Pajak Pratama Temanggung. *Faktor-Faktor Yang Mempengaruhi Penggelapan Pajak Di Kantor Pelayanan Pajak Pratama Temanggung*, 1(1). P. 3–4.

<sup>22</sup>Sinaga Pardamean Dianto Henry (2020). "Reconstruction of the *Ultimum remedium* Principle of Administrative Penal Law in Building a Sociological-Opposed Tax Investigation in Indonesia." *Ayer Journal*

Table 1. Verdicts on Tax Crime for 2022-2023

Tax Criminal Verdicts Criminal Imprisonment and Fines Sanctions	Tax Criminal Verdicts Criminal Imprisonment and Fines Sanctions	Tax Criminal Verdicts Fines Sanctions
Number 6/Pid.Sus/2022/PN Kot	Number 1149 K/Pid.Sus/2022	Number
Number 10/Pid.Sus/2022/PN Kbu	Number 476/Pid.Sus/2022/PN Jkt.Tim	224/Pid.Sus/2022/PN.Tpg
Number 10/Pid.Sus/2022/PN Sdn	Number 1437/Pid.Sus/2022/PN Mdn	Number 678
Number 13/Pid.Sus/2022/PN Bon	Number 456/Pid.Sus/2021/PN Snn	PK/Pid.Sus/2023
Number 20/Pid.Sus/2022/PN Sda	Number 662/Pid. Sus/2021/PN. Jmb	
Number 21/Pid.Sus/2022/PN Sda	Number 834/Pid.Sus/2021/PN.Jkt.Utr	
Number 28/Pid.Sus/2022/PN Bjb	Number 975/Pid.Sus/2021/PN Bdg	
Number 34/Pid.Sus/2022/PN Lsm	Number 62/Pid.Sus/2023/PN Dps	
Number 35/Pid.Sus/2022/PN Lsm	Number 60/Pid.Sus/2023/PN Btm	
Number 53/Pid.Sus/2022/PN Jkt.Sel	Number 75/Pid.Sus/2023/PN Pbu	
Number 99/Pid.Sus/2022/PN Tng	Number 159/Pid.Sus/2022/PN Sgr	
Number 102/Pid.Sus/2022/PN Mrb	Number 120/Pid.Sus/2023/PT DKI	
Number 120/Pid.Sus/2022/PN Jkt.Sel	Number 117/Pid.Sus/2023/PT DKI	
Number 155/Pid.Sus/2022/PN Jmb	Number 118/Pid.Sus/2023/PT DKI	
Number 161/Pid.Sus/2022/PNJkt.Tim	Number 3004 K/Pid.Sus/2023	
Number 162/Pid.Sus/2022/PNJkt.Tim	Number 400/Pid.Sus/2023/PN Jkt.Utr	
Number 167/Pid.Sus/2021/PN Klt	Number 787/Pid.Sus/2023/PT Sby	
Number 290 K/Pid.Sus/2022	Number 236/Pid.Sus/2023/PT Bdg	
Number 185/Pid.Sus/2022/PN Cbi	Number 235/Pid.Sus/2023/PT Bdg	
Number 199/PID.SUS/2021/PT. BDG	Number 56/Pid.Sus/2023/PN Wsb	
Number 249/Pid.Sus/2022/PN Tpg	Number 146/Pid.Sus/2023/PN Pal	
Number 285/Pid.Sus/2022/PN.Jkt.Sel	Number 264/Pid.Sus/2023/PN Dpk	
Number 382/Pid.Sus/2022/PN.Jbg	Number 263/Pid.Sus/2023/PN Dpk	
Number: 383/Pid.Sus/2022/PN.Jbg	Number 162/Pid.Sus/2023/PT Jmb	
Number 445 PK/Pid.Sus/2022	Number 543/Pid.Sus/2023/PN Plg	
Number 410/Pid.Sus/2022/PN Mks	Number 5673 K/Pid.Sus/2023	
Number 717 PK/Pid.Sus/2023	Number 5848 K/Pid.Sus/2023	

Based on the chronology of criminal verdicts found in 2022 to 2023 after the existence of Law No. 7 of 2021 on Tax Regulations Harmonization, the application of the principle of *ultimum remedium* by judges in deciding tax criminal cases has not become the main alternative in decisions making. Among the 56 tax crimes that occurred after the Tax Regulations Harmonization law came into force, 2 decisions were found that applied the principle of *ultimum remedium* as a form of punishment given. Where in one of the decisions, the Tanjung pinang District Court with case number 224/Pid.Sus/2022/PN.Tpg against the defendant Leo Ricky, the court at first instance decided to impose criminal sanctions in the form of paying a fine as a result of his actions of causing harm to state income without being sentenced to prison.

Apart from that, in the criminal case verdict number 678 PK/Pid.Sus/2023 which was submitted for review through the Supreme Court with the applicant Mohamad Aly Shobat regarding the previous verdict by the Central District Court which stated that he had been legally proven in committing the criminal act of “Intentionally not remitting the taxes that have been deducted and collected on an ongoing basis,” and the defendant is sentenced to imprisonment for 1 (one) year and 6 (six) months; and a criminal fine of 3 x Rp 429.097.664,00 (four hundred twenty-nine million ninety-seven thousand six hundred and sixty-four rupiah) = Rp 1.287.292.992,00 (one billion two hundred eighty-seven million two hundred and ninety two thousand nine hundred and ninety two rupiah) if the defendant does not pay the fine no later than 1 (one) month after the court verdict comes into effect, then the defendant’s property will be confiscated by the prosecutor and auctioned off to pay said fine, in the event that the defendant does not have property sufficient to pay the fine, it will be replaced by



imprisonment for 6 (six) months. Meanwhile, in the review decision by the Supreme Court judge, the results of the decision stated that the defendant Mohamad Aly Shobat, S.E. remains valid and convincing and is condemned to a fine that is calculated according to the amount of loss the state suffered by the result of the defendant's actions. This proves that the *ultimum remedium* principle contained in the Tax Regulation Harmonisation law is still an alternative choice for the panel of judges in deciding verdicts, especially tax criminal cases in 2022-2023 after the enactment of of 2021 on Tax Regulations Harmonization.

Article 44B section 2(a) Law Number 7 of 2021 states, if a criminal case has been submitted to court, the defendant is given the opportunity to pay for all losses in state income caused his/her actions. This opportunity is accompanied by administrative sanctions determined based on the judge's consideration. The principle of *Ultimum Remedium* can be the last resort in imposing sanctions. Furthermore, the second point explains the sanctions given from proof of tax collection, proof of tax withholding, and the amount of tax on tax invoice, and/or proof of tax deposit. Then in section 2(b) it is explained that the payment as referred to in the previous section can be taken into consideration by the Panel of Judges deciding the case to deliver a sentence without being accompanied by a prison sentence.

Looking at the number of criminal tax sanctions that occurred after Law Number 7 of 2021 came into effect, does not indicate that there is application of the *Ultimum Remedium* principle in the results of verdicts by the Panel of Judges which have permanent legal force in imposing administrative sanctions as a last resort without being accompanied by imprisonment for imposing a prison sanction.

This shows that there are significant challenges and inconsistencies in the application of criminal acts in the context of tax investigations in Indonesia. The reconstruction of the *Ultimum Remedium* principle of Administrative Criminal Law is very important to overcome these challenges and ensure that the implementation of tax rights and obligations are accompanied by legal protection and predictability.

Law Number 7 of 2021 came into effect in 2022 sanctions contained in verdicts that have been stated still use prison sanctions as the first sentence that must be served by the defendant. Therefore, *Primum Remedium* is the choice of the panel of judges in deciding cases of criminal acts that occur, where this functions as the first legal effort, and not the last, in the legal context to prevent people from committing crimes for which there is no other way to obtain an alternative. The application of *Primum Remedium* principle is proven by the finalized verdicts, the panel of judges tend to use imprisonment as the first option, which is then followed by a fine of 2 (two) times the principal amount of tax or loss of state income due to their actions.

According to the doctrine of state administrative law includes tax laws and regulations. Which means, when legal problems develops, related to violations of tax regulations, and legal administrative resolution mechanisms used to enforce the law.<sup>23</sup> Therefore, supported by Law Number 7 of 2021 on Tax Regulations Harmonization, it provides an option for resolving problems regarding violations in the tax sector that can be resolved using administrative sanctions.

In addition, sanction formulatiomm must pay attention to legal ideas, principles and norms in order to achieve legal objectives. <sup>24</sup>In criminal justice, the value of justice towards society must be a priority. According to one interpretation of justice, rights are the right to consider the principle of balance while weighing an individual's potential proportionally.

<sup>23</sup>Mudzakkir. (2011). Pengaturan Hukum Pidana Perpajakan dibidang Perpajakan dan hubungannya dengan hukum pidana umum dan khusus, *Jurnal Legislasi Indonesia* 8(1): p.45.

<sup>24</sup>Priyono, P. A. (2019). 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 Paramarta: Jurnal Ilmu Hukum*. p.2.

The law and the method of collection must be equally fair in order to achieve the goal of the law, namely obtaining justice. To be fair, taxes must be applied broadly, fairly, and in accordance with each person's income. Meanwhile, providing taxpayers with the opportunity to voice their agreement with payment delays and appeal to the Court is necessary to ensure that this is implemented fairly.<sup>25</sup> Law enforcement officials are also given the freedom to impose administrative or criminal sanctions based on their authority to take legal action against any errors in the field of taxation by considering the nature of the violation, the significance of the violation and its negative impact.

Reformulation is needed to strengthen justice in law enforcement, where in the case of implementing sanctions against entrepreneurs, it is necessary to pay attention to aspects of justice in order to realize the implementation of checks and balances for all parties involved. Administrative verdict making must be handled by the judiciary to create justice in which the Panel of Judges has an important role in realizing justice.<sup>26</sup>

Because tax law is public law that regulates administration, administrative sanctions need to be prioritized by applying *Ultimum Remedium* in accordance with the mandate of the law. The existence of these parameters can serve as a guideline to provide choices to law enforcers in making decisions or actions regarding administrative or criminal sanctions. Law Number 7 of 2021 which was intended as a last resort, but until this moment, it seems that this has not been realized.

## CONCLUSION

The imposition of criminal sanctions in tax cases by Taxpayers based on the results of Tax Criminal Case Verdicts from 2022 to 2023 following the enactment of Law Number 7 of 2021 on Tax Regulations Harmonization, has not implemented *Ultimum Remedium* principle as the aim of the Law. The lack of role of state officials who exercise judicial power in considering aspects of restitution purposes in imposing criminal sanctions on defendants can result in losses to the state with the possibility that the choice of sanction to be serve is imprisonment / imprisonment. Standards of justice are violated by District Court verdicts that impose sanctions on parties who pay or compensate for losses in state revenue. For the sake of realizing justice and general welfare, as stated in the Preamble to the 1945 Constitution in the fourth paragraph, this results in loss of state revenue, in particular the loss or reduction of tax revenue as one of the state's rights. This greatly hinders development progress (sustainable development). Therefore, to cover state revenue losses in such circumstances, criminal fines that dare not paid must be remedied with the property of Entity Taxpayers, which are then to be auctioned within a predetermined time, and ultimately must be resolved through blocking and inclusion.

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<sup>25</sup>Mardiasmo. (2009). "*Perpajakan*". Yogyakarta: Andi. p.56.

<sup>26</sup>Suryaman, D. (2021).*Op. Cit.* p.6.

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