

LEGAL REFORMULATION ON EXPIRED PROVISIONS OF PROSECUTION OF TAX CRIMES IN INDONESIA*

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Article	Abstract
<p>Keywords: legal reformulation, tax crime, prosecution</p> <p>History of Article Received: July 02, 2024; Reviewed: July 07, 2024; Accepted: July 11, 2024; Published: July 12, 2024</p> <p>DOI: 10.56282/jtlp.v2i3.519</p>	<p>There are still philosophical gaps and juridical gaps in terms of the formation and implementation of Article 40 of the Law on General Provisions and Tax Procedures in Indonesia (KUP Law). Those gaps show the need for ideal regulation of the expiry date for prosecuting criminal offenses in the field of taxation in Indonesia in the future. Based on normative juridical methods using secondary data in the form of primary, secondary and tertiary legal materials, this study produces two conclusions. First, the expiry date for prosecuting criminal acts in the field of taxation currently in force in Indonesia has legal uncertainty due to explanations that do not interpret prosecution correctly. Apart from that, there are other criminal provisions in the field of taxation which are not related to "tax payable, the end of the Tax Month, the end of Part of the Tax Year, or the end of the Tax Year", and the different threats of imprisonment for criminal offenses in the field of taxation as if the prosecution has expired can also be interpreted as being attached to Article 40 of the KUP Law. Second, the ideal regulation of the expiry date for prosecuting criminal acts in the field of taxation in Indonesia in the future is that the provisions must fulfill the principles of equality before the law, legal certainty and human rights. It is recommended that there be alignment with the renewal of Article 40 of the KUP Law with the prosecution expiry provisions in the Criminal Code Law.</p>

A. INTRODUCTION

The statute of limitations for criminal prosecution universally plays a highly strategic role in ensuring legal certainty and justice for suspects or defendants, victims

and/or their families, society at large,¹ and the state. Without provisions governing the statute of limitations for criminal prosecution, criminal law enforcement would be ineffective and difficult to implement due to the lack of certainty in resolving cases and the increasing difficulty in locating and collecting evidence for criminal incidents.²

One of the critical aspects requiring examination today is the statute of limitations for criminal prosecution in the field of taxation. It is necessary to reconstruct the legal framework for the statute of limitations on tax-related crimes, given the existing philosophical and juridical gaps. The philosophical gap pertains to the lack of justice and legal certainty. The occurrence of injustice in the statute of limitations for tax-related crimes could lead to offenders escaping punishment, despite their culpability³, and the time limitation for prosecution based on the maximum penalty has raised concerns regarding the validity of evidence in court.⁴

The juridical gap in the statute of limitations for tax-related crimes can be observed in its regulatory framework, which does not conform to the general provisions in the Criminal Code (KUHP). Article 40 of Law No. 6 of 1983 on General Tax Provisions and Procedures, as amended most recently by Law No. 6 of 2023 on the Establishment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation as Law (UU KUP), stipulates that tax crimes cannot be prosecuted after 10 years from the date the tax was due, the end of the tax period, the end of the fiscal year, or the relevant tax year. In contrast, the general statute of limitations for criminal prosecution under KUHP is regulated by Article 78. Article 78(1) of KUHP states that prosecution is time-barred after: a) 6 years for crimes punishable by imprisonment for up to 3 years, fines, or detention; b) 12 years for crimes punishable by imprisonment of more than 3 years; c) 18 years for crimes punishable by life imprisonment or the death penalty. Kemudian Article 78(2) further stipulates that for offenders under 18 years of age at the time of the crime, the limitation period is reduced by one-third.

The philosophical and juridical gaps in the statute of limitations for tax-related crimes give rise to two research questions in this study: **First**, what are the current regulatory provisions governing the statute of limitations for tax-related crimes in Indonesia? **Second**, what would constitute an ideal legal framework for the statute of limitations for tax-related crimes in Indonesia in the future?

B. METHOD

To address these research questions, this study employs a normative juridical approach. This methodology is chosen because the subject of analysis concerns law as a normative framework, namely legal statements containing obligatory provisions

* This article is a private scientific study of the researcher and does not reflect the institution's opinion/policy.

¹ Mahkamah Konstitusi, "Putusan Nomor 86/PUU-XX/2022", pp. 96, available at https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_8847_1675153887.pdf, accessed on October 25, 2023.

² Ilham M.W., 2022, "Penindakan Penuntutan Perkara Daluwarsa Melindungi Pelaku dan Korban", available at <https://www.mkri.id/index.php?page=web.Berita&id=18688&menu=2>, accessed on October 25, 2022.

³ *Loc.cit.*

⁴ Utami Argawati, 2023, "Masa Kedaluwarsa Penuntutan Tindak Pidana Ciptakan Kepastian dan Keadilan", available at <https://www.mkri.id/index.php?page=web.Berita&id=18876>, accessed on October 26, 2023.

with sanctions as logical consequences for non-compliance.⁵ This normative juridical research relies on secondary data comprising primary, secondary, and tertiary legal materials. Primary legal materials include binding legal instruments, such as prevailing tax regulations.⁶ Secondary legal materials consist of academic literature and scholarly articles that provide further explanation of primary legal materials.⁷ Tertiary legal materials encompass reference sources such as legal dictionaries and internet sources that offer guidance or clarification on primary and secondary legal materials.⁸

C. ANALYSIS AND DISCUSSION

1. Regulation of the Statute of Limitations for Tax-Related Crimes and Comparative Analysis

The statute of limitations for tax-related crimes in Indonesia is governed by Article 40 of UU KUP, which states: "Tax-related crimes cannot be prosecuted after ten (10) years from the date the tax was due, the end of the tax period, the end of the fiscal year, or the relevant tax year." The explanation of Article 40 clarifies that this provision aims to provide legal certainty for taxpayers, prosecutors, and judges. The term "prosecution" refers to the submission of a notification letter regarding the commencement of an investigation (SPDP) to the prosecutor by an investigator from the Indonesian National Police (Polri) and/or to the reported party.

The statute of limitations for tax-related crimes as set out in Article 40 of UU KUP constitutes a **lex specialis** exception to the **lex generalis** principle found in KUHP. The statute of limitations for general criminal prosecution under KUHP is governed by Articles 78, 79, and 80. Article 78 categorizes the limitation periods based on the severity of the crime, while Article 79 states that the period begins the day after the crime is committed. Article 80(1) stipulates that prosecution interrupts the limitation period, provided the prosecution is known to the accused or has been properly notified.⁹ Article 80(2) provides that once the interruption ceases, a new limitation period begins.¹⁰ Similarly, Article 81 of KUHP allows for the suspension of prosecution due to prejudicial disputes that must be resolved before a criminal trial proceeds.¹¹

The current provisions in KUHP will no longer apply as of January 2, 2026, following the enactment of Law No. 1 of 2023 on the New Criminal Code (UU KUHP)¹². Several articles within UU KUHP regulate the statute of limitations for

⁵ Soetandyo Wignjosoebroto, "Penelitian Hukum dan Hakikatnya sebagai Penelitian Ilmiah", in Sulistyowati Irianto & Shidarta, *Metode Penelitian Hukum: Konstelasi dan Refleksi*, Jakarta: Yayasan Obor Indonesia, 2009, p. 84.

⁶ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: Penerbit Universitas Indonesia, 2010, p. 52.

⁷ *Loc.cit.*

⁸ *Loc.cit.*

⁹ Ruruh Handayani, "Kedaluwarsa Penuntutan Tindak Pidana di Bidang Perpajakan", 2023, available at <https://www.pajak.com/pajak/kedaluwarsa-penuntutan-tindak-pidana-di-bidang-perpajakan/>, accessed on October 30, 2023..

¹⁰ Leden Marpaung, *Asas, Teori, Praktik Hukum Pidana*, Jakarta: Sinar Grafika, 2008, p. 102.

¹¹ *Loc.cit.*

¹² Ahmad Viqi, "KUHP Baru Berlaku 2026, Wamenkumham: Tidak Mungkin Puaskan Semua Pihak", available at <https://www.detik.com/bali/berita/d-6820366/kuhp-baru-berlaku-2026-wamenkumham-tidak-mungkin-puaskan-semua-pihak>, accessed on October 30, 2023.

criminal prosecution. Article 136 states that prosecution is barred after: a) 3 years for crimes punishable by imprisonment of up to 1 year or a fine of up to category III; b) 6 years for crimes punishable by imprisonment of 1 to 3 years; c) 12 years for crimes punishable by imprisonment of 3 to 7 years; d) 18 years for crimes punishable by imprisonment of 7 to 15 years; e) 20 years for crimes punishable by life imprisonment or the death penalty. If the offense is committed by a minor, the limitation period is reduced by one-third. If the offense is committed by a minor, the limitation period for prosecution due to expiration is reduced by one-third. Furthermore, Article 137 of the Indonesian Criminal Code (KUHP) stipulates that the limitation period is calculated from the day after the offense was committed, except in the following cases: a) For crimes of forgery and currency destruction, the limitation period is calculated from the day after the counterfeit item or damaged currency is used. b) For offenses as stipulated in Articles 450, 451, and 452 of the KUHP, the limitation period is calculated from the day after the victim is released or dies as a direct result of the offense.

Additionally, Article 138 of the KUHP states that legal action for criminal prosecution halts the running of the limitation period. The suspension of the limitation period takes effect from the day after the suspect or defendant becomes aware of or is notified of the prosecution against them in accordance with the applicable legal provisions. Once the limitation period is suspended due to legal action, a new limitation period begins. The limitation period for criminal prosecution may also be postponed. Article 139 of the KUHP provides that if prosecution is temporarily halted due to a legal dispute that must be resolved beforehand, the limitation period for criminal prosecution may be postponed until the dispute has been adjudicated.

Most provisions regarding specific criminal offenses do not explicitly regulate the statute of limitations for prosecution. This means that the statute of limitations for these offenses follows the provisions of the Indonesian Criminal Code (KUHP). This can be observed in several laws, including Law No. 32 of 2009 on Environmental Protection and Management, as most recently amended by Law No. 6 of 2023 on the Establishment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation as Law, Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes, and Law No. 20 of 2001 on Amendments to Law No. 31 of 1999 on the Eradication of Corruption Crimes.

2. Ideal Regulation of the Statute of Limitations for Tax-Related Crimes in Indonesia

The statute of limitations for tax-related crimes in Indonesia is mandated by the Fourth Paragraph of the Preamble of the 1945 Constitution (UUD NRI 1945) and Articles 27(1), 28D(1), and 28J(2) of the UUD NRI 1945. This implies that the regulation of the statute of limitations for tax-related crimes must adhere to the principles of equality before the law, legal certainty, and human rights (HAM). The principle of equality before the law in the statute of limitations for tax-related crimes indicates that its regulation must ensure equal legal standing for all citizens and require them to uphold the law and government without exception. The principle of legal certainty in the statute of limitations for tax-related crimes suggests that its regulation must ensure recognition, guarantees, protection, and

fair legal certainty, as well as equal treatment before the law for all individuals. Lastly, the principle of human rights (HAM) in the statute of limitations for tax-related crimes signifies that its regulation must reflect respect for human rights in maintaining order within society, the nation, and the state.

The statute of limitations for criminal prosecution in Indonesia must uphold the principles of equality before the law, legal certainty, and human rights (HAM), indicating that the statute of limitations for tax-related crimes needs to be reconstructed in future amendments to the UU KUP. This critical review is based on several considerations. First, the disparity in imprisonment penalties for different tax-related offenses does not align with the core principles of the statute of limitations found in KUHP and UU KUHP. For instance, Article 38 of UU KUP stipulates a minimum imprisonment of 3 months and a maximum of 1 year, whereas Articles 39(1) and 39A impose a minimum imprisonment of 6 months and a maximum of 6 years. However, the statute of limitations for both offenses remains the same, as dictated by Article 40 of UU KUP. In contrast, Articles 78 of KUHP and 136 of UU KUHP regulate the statute of limitations for criminal prosecution based on the type of crime and the severity of the imprisonment penalty. This discrepancy suggests that the statute of limitations for tax-related offenses in UU KUP should be revised to align with broader legal principles.

Second, Article 40 of UU KUP is interpreted differently in its main provision and explanatory section. The main provision stipulates that the prosecution of tax-related crimes is time-barred 10 years after the tax becomes due, the end of the tax period, the end of the fiscal year, or the relevant tax year. However, the explanatory section of Article 40 misinterprets this provision by allowing tax investigations on a tax period, fiscal period, or tax year that has not exceeded 10 years to continue, as long as an SPDP (Notification of Investigation Commencement) is submitted by a tax investigator to the public prosecutor through the police investigator before the 10-year period expires. However, the definition of prosecution is explicitly provided in the Indonesian Code of Criminal Procedure (KUHP) and Law No. 11 of 2021 on Amendments to Law No. 16 of 2004 on the Prosecution Service of the Republic of Indonesia (UU Kejaksaan). Article 1(7) of KUHP defines prosecution as the act of a public prosecutor filing a criminal case with the competent district court, in accordance with legal procedures, requesting a judicial examination and ruling. Article 1(4) of UU Kejaksaan similarly defines prosecution as the act of the public prosecutor filing a case with the competent district court according to procedural criminal law, requesting judicial examination and a ruling. Additionally, SPDP (Notification of Investigation Commencement) is a written notice sent to the Attorney General's Office informing them that an investigation has been initiated by an investigator, as regulated under Article 1(16) of Police Chief Regulation No. 6 of 2019 on Criminal Investigations. Without an SPDP, the public prosecutor would be unaware that an investigation is ongoing, which would hinder pre-prosecution processes and disrupt the coordination between investigators and prosecutors¹³. Therefore, Article 40 of UU KUP, which states that tax-related crimes cannot be prosecuted after 10 years, should be interpreted as meaning that prosecution

¹³ Annisa Medina Sari, 2023, "Pengertian SPDP dan SPRINDIK Dalam Penyidikan", available at [translated source], accessed on October 30, 2023.

officially begins only when the Attorney General's Office submits the case file along with the indictment to the district court.¹⁴

Third, the statute of limitations for tax-related criminal prosecution is only regulated under Article 40 of UU KUP, meaning that aspects not covered within this article but already addressed in KUHP must be applied in accordance with KUHP, provided they do not violate the principle of *lex specialis derogat lex generalis* (special law overrides general law). Unregulated aspects of the statute of limitations in UU KUP include, for example, the suspension of prosecution for tax crimes due to legal disputes unrelated to taxation and cases where the tax-related crime is committed by a person under 18 years of age. Fourth, UU KUP still contains several offenses unrelated to tax liability, the end of a tax period, or the conclusion of a fiscal year, such as: Article 41 (officials failing to uphold their duty of confidentiality), Article 41A (individuals required to provide testimony or evidence but refusing to do so or providing false information), Article 41B (individuals deliberately obstructing or interfering with the investigation of tax crimes), Article 41A of Law No. 19 of 2000, which amended Law No. 19 of 1997 on Tax Collection with Forced Letters (UU Penagihan). This indicates that Article 40 of UU KUP does not sufficiently address all tax-related offenses, necessitating a revised statute of limitations framework that aligns with broader legal principles and avoids inconsistencies in tax crime prosecution.

D. CONCLUSION AND RECOMMENDATIONS

This study yields two key conclusions. First, the current regulation of the statute of limitations for tax-related crimes in Indonesia is exclusively governed by Article 40 of UU KUP. Amendments to this provision are necessary, considering several factors, including inconsistencies between the wording of the article and its explanation, which misinterpret the legal meaning of prosecution. Additionally, there are tax-related offenses that do not directly relate to "tax liability, the end of a tax period, the end of a fiscal period, or the end of a tax year." Furthermore, variations in the severity of imprisonment penalties for different tax crimes create an impression that the statute of limitations applies uniformly to all offenses under Article 40 of UU KUP.

Second, an ideal statute of limitations for tax-related criminal prosecution in Indonesia must adhere to the principles of equality before the law, legal certainty, and human rights (HAM). These principles have already been incorporated into UU KUHP, which regulates general criminal prosecution time limits. Therefore, future legislative reforms on the statute of limitations for tax-related crimes should align UU KUP with these broader legal principles to ensure consistency, fairness, and legal certainty in tax crime prosecution.

¹⁴ Andi Hamzah, *Hukum Pidana Indonesia*, Jakarta: Sinar Grafika, 2021, p. 226.

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