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OPTIMAL TAX INVESTIGATION BASED ON THE RECOVERY OF STATE REVENUE LOSSES

Wahyu Widodo[1], Rizki Piet Darmawan[2]
Program Doktor Hukum Universitas Pelita Harapan Email: wahyugalih@gmail.com
Kementerian Keuangan Republik Indonesia

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Abstract

This study investigates the optimal implementation of tax crime investigations aimed at safeguarding the state's revenue interests. It emphasizes that the recovery of losses to state revenue must be the primary focus in tax crime investigations, in line with the principles of restorative justice. The study uses a normative legal approach grounded in statutory provisions, legal doctrines, and empirical data to address whether tax investigations in Indonesia reflect restorative objectives and what guiding principles may enhance their effectiveness.

A. INTRODUCTION

Article 43A paragraph (1) of the General Provisions and Tax Procedures Law (KUP) authorizes the Director General of Taxes to conduct a preliminary evidence audit based on information, data, reports, or complaints before initiating a formal investigation of tax-related criminal offenses. Criminal law enforcement in the field of taxation can only proceed if the Directorate General of Taxes (DGT) obtains or receives credible indications of a tax offense, or in cases where the offense is discovered in flagrante delicto.

From the classification of special criminal law into internal and external categories, tax criminal law falls under the external category. This implies that tax criminal law is fundamentally administrative in nature but is supplemented by penal sanctions and is regarded as an *ultimum remedium.*[3] In other words, criminal penalties are only applied

[1] Doctoral Program in Law, Universitas Pelita Harapan, Correspondence Email: wahyugalih@gmail.com.
[2] Head of Investigation Section III, Sub-Directorate of Investigation, Directorate of Law Enforcement, Directorate General of Taxes, Correspondence Email: duniapluto@gmail.com.
[3] Edward Omar Sharif Hiariej, "*Asas Lex Specialis Systematis dan Hukum Pidana Pajak*." Jurnal Penelitian Hukum De Jure, vol. 21 (2021): 4, 7.

as a last resort when administrative measures fail, and administrative sanctions serve as substitutes for criminal sanctions. Therefore, if a case has already been resolved administratively, it precludes further legal proceedings through other means.

In contemporary legal development, tax criminal law is recognized as a *lex specialis systematis*, a derivative of the principle *lex specialis derogat legi generali*. This classification is justified by several factors: 1) The material criminal provisions within tax law deviate from general norms; 2) The KUP Law contains procedural criminal provisions that differ from standard criminal procedure; 3)The legal subjects liable under tax criminal law are specific – namely, taxpayers.[4]

Material tax criminal law constitutes special penal regulations outside the Indonesian Penal Code (KUHP), thus requiring procedural law tailored to this specific domain. The procedural criminal law under the KUP introduces notable deviations from the Criminal Procedure Code (KUHAP). These special characteristics can be seen in the institutions involved in enforcement, the scope of legal subjects, procedural mechanisms, and the statute of limitations.

In terms of enforcement institutions, Article 44 paragraph (1) of the KUP mandates that investigations of tax crimes can only be conducted by specific civil servants within the DGT, granted special authority as tax crime investigators. The KUP assigns this role exclusively to these Tax Civil Servant Investigators (PPNS), with the National Police responsible solely for coordination and oversight.

Procedurally, the KUP diverges from KUHAP by initiating legal proceedings through a preliminary evidence audit prior to formal investigation, as stipulated in Article 43A paragraph (1). The legal subject of tax criminal law – the person liable to tax obligations – is distinctively defined. Taxpayers are considered a specialized subject, unlike the broader subjects addressed in KUHAP.

Regarding the statute of limitations, Article 40 of the KUP stipulates that criminal prosecution in tax matters cannot be initiated after ten years from the time the tax became due, the end of the tax period, fiscal year segment, or fiscal year concerned. This departs from the general rule in Article 78 of the KUHP.

Based on sufficient preliminary evidence obtained from an initial audit, the expansion of that audit, or the development of an investigation involving other suspects, a formal investigation shall then be conducted. Article 1 point 27 of the General Provisions and Tax Procedures Law (KUP) defines a Tax Crime Investigation as a series of actions undertaken by investigators to search for and gather evidence which, in turn, clarifies the criminal act committed in the field of taxation and identifies the perpetrator. This definition does not differ from the one provided in the Criminal Procedure Code (KUHAP); the distinction lies in the scope of the offense. The scope of a tax crime investigation is limited to actions specifically classified as criminal offenses under tax legislation.

The handling of criminal cases in the field of taxation adheres to the principle of *lex specialis derogat legi generalis*, specifically through its derivative known as *lex specialis systematis*. This legal doctrine means that general laws (such as the Criminal Procedure Code/KUHAP and the Penal Code/KUHP) remain applicable unless there are specific provisions stipulated in special legislation, in this case the General Provisions and Tax Procedures Law (KUP). In essence, special provisions (*lex specialis*) override general provisions (*lex generalis*). This principle is consistent with Article 103 of the Indonesian Penal Code, which states that the provisions contained in Chapters I to VIII of the Code

[4] Ibid 8

also apply to offenses punishable under other statutory regulations, unless otherwise stipulated by such laws. Accordingly, in the absence of specific provisions under the KUP, the handling of tax-related criminal cases should refer to the general criminal procedure and penal codes (KUHAP/KUHP).

The foregoing discussion prompts the formulation of the main research problems addressed in this study, which focus on two central questions: First, to what extent does tax investigation in Indonesia reflect the principle of recovering losses to state revenue? Second, what guiding principles can be applied to ensure that tax investigations are optimally conducted in recovering such losses? To answer these questions, the author employs a normative legal analysis of tax criminal law, primarily based on Law Number 6 of 1983 on General Provisions and Tax Procedures (along with its amendments), the Indonesian Penal Code (KUHP), the Criminal Procedure Code (KUHAP), and other relevant statutory instruments. This normative analysis is further connected to relevant legal theories, doctrines, and empirical data pertaining to the subject matter. In doing so, the study aims to provide a comprehensive and structured response to the research problems outlined above. Therefore, the title of this study is Optimal Tax Investigation Based on the Recovery of State Revenue Losses.

B. RESULT AND DISCUSSION

1. Law Enforcement Based on the Recovery of Losses

Roscoe Pound viewed law as a tool of social engineering and social control, aimed at creating harmony and balance in order to optimally fulfill the needs and interests of individuals within society.[5] Law as a tool of social engineering can be interpreted as an instrument designed to alter the behavior of members of society in accordance with pre-established goals. When applied to the context of taxation, criminal sanctions in tax-related cases are intended to change taxpayer behavior towards compliance. The enforcement of criminal law in the field of taxation is expected to produce a deterrent effect on offenders and a preventive effect on potential offenders. This, in turn, is intended to optimize tax revenue collection.

In criminal law doctrine, tax criminal law is referred to as ius singulare because it possesses its own distinct system of norms and sanctions. It is considered the oldest form of special criminal law in the world, with highly specific characteristics. In addition to its hybrid nature—containing both administrative and penal elements—tax criminal law is also grounded in economic and fiscal principles.[6] Accordingly, within the framework of legal doctrine, tax criminal law is termed *ius singulare* due to its economically oriented features and characteristics, which are designed to maximize state revenue collection.

The core principle of an optimal tax investigation is grounded in the notion of maximizing the recovery of losses to state revenue. Within the framework of economic analysis of tax criminal law, the recovery of state revenue losses can be achieved by taking into account the total amount of revenue lost due to the tax offense, added to the costs incurred during the investigation process, and subtracting the amount of restitution and criminal fines paid by the tax offender.

The aforementioned principle is inseparable from the inherent factors embedded in the enforcement of criminal law in the field of taxation. These inherent factors include: (1) the structure of the 2022 State Budget (APBN), in which 68 percent of state revenue

[5] Nazaruddin Lathif, "*Teori Hukum sebagai Sarana/Alat untuk Memperbaharui atau Merekayasa Masyarakat*." Pakuan Law Review, vol. 3, no. 1 (Januari-Juni 2017): 84.

[6] Edward Omar Sharif Hiariej, "*Asas Lex Specialis Systematis dan Hukum Pidana Pajak.*", 8

is supported by tax collection; (2) the budgetary function of taxation, whereby taxes serve as a primary instrument for channeling funds into the state treasury to finance public expenditures; and (3) the mandate of the Directorate General of Taxes (DGT) to mobilize tax revenue in pursuit of national fiscal independence. Given these inherent factors, criminal law enforcement in the field of taxation must necessarily align with efforts to secure tax revenues. Therefore, adopting a restorative justice approach in tax crime enforcement is not merely an option, but a necessity.

The term *Restorative Justice* was first introduced by Albert Eglash in 1958, when he categorized types of criminal justice into three models: (1) *Retributive Justice*, which is based on punishment; (2) *Distributive Justice*, which focuses on managing the offender; and (3) *Restorative Justice*, which centers on restitution.[7] an Ness and Strong explain that restorative justice emphasizes the consequences of the offender's actions and actively involves the victim in the process of recovery and rehabilitation.[8] Similarly, John Braithwaite asserts that empowering the victim to define what constitutes restoration is a fundamental element of restorative justice philosophy.[9] The concepts put forth by Eglash, Van Ness and Strong, and Braithwaite have been further developed in the context of tax criminal law enforcement, particularly considering that the ultimate objective of taxation is to mobilize revenue in support of fiscal independence. Therefore, the recovery of state revenue losses under the restorative justice framework can be realized through the payment of losses and associated penalties, calculated based on the amount of state revenue lost, at various stages of the legal process—investigation, prosecution, or court trial. This approach yields several benefits: it enables the state to recover revenue through restitution and penalties as a form of restoration for the consequences of tax crimes, while simultaneously reducing state expenditures related to the reintegration and incarceration of convicted offenders.

In the implementation of criminal law enforcement at the investigation stage, the process of tax investigation is expected to yield optimal outcomes so that tax criminal law provisions can function effectively to prevent taxpayers from engaging in prohibited conduct. Moreover, when violations do occur, the Directorate General of Taxes (DGT) must be able to perform its enforcement functions effectively. Efforts to achieve optimal tax investigations may involve a variety of methods and approaches, each of which will influence the outcomes attained. One of the key approaches to achieving optimal tax investigation is the economic approach. From this perspective, three important components must be considered in evaluating the effectiveness of tax investigation: the principle of rationality, the principle of efficiency, and the economic analysis of tax investigation.

a) Principle of Rationality

The principle of rationality refers to the idea that individuals, when engaging in certain activities—including committing criminal acts—think rationally with the primary goal of maximizing expected utility.[10] Rationality in this context means selecting the most

[7] Daniel W. Van Ness and Karen Heetderks Strong, Restoring Justice: An Introduction to Restorative Justice, (USA: Anderson Publishing, 2015), 5th ed, 23.
[8] Ibid
[9] John Braithwaite, Restorative Justice and Responsice Regulation**,** (New York: Oxford University Press, 2002), 45.
[10] Herbert Hovenkamp, "*Rationality in law and Economics*." George Washington Law Review, vol. 60 (1992): 293.

effective means to achieve one's chosen ends.[11] For example, a company seeking to maximize profits will compare all available methods to achieve the highest possible return while taking into account the costs involved. The option with the lowest cost will be chosen as the most efficient way to generate maximum profit.

The concept of rationality originates from microeconomic theory, specifically the *rational choice theory*. This theory explains how individuals respond to incentives and is particularly important in understanding the interaction between legal rules and societal behavior. The existence of legal norms influences how individuals behave, as they make decisions based on the costs and benefits associated with compliance or non-compliance.[12]

According to Russel Korobkin and Thomas Ulen, there are four conceptualizations of rationality:

1) A man is a rational maximizer of his ends. In this view, rationality is defined as the pursuit of one's goals without regard to the means used to achieve those goals (i.e., profits or gains), regardless of their ethical or practical implications;

2) Expected utility. This definition considers the means employed by the actor to obtain profit or benefit. To achieve the expected utility, five conditions must be met: commensurability, transitivity, invariance, cancellation, and dominance.[13]

3) Self-interest. Individuals seek to achieve personal gain, and the strategies or means they choose to reach that gain depend on their specific interests and preferences.

4) Wealth maximization. Rational actors aim to increase their wealth by generating profit, making decisions that they believe will maximize their net economic value.

When the concept of rationality is applied to criminal law, offenders are viewed as rational economic actors who weigh the costs of committing a crime against the expected benefits.[14] If the anticipated gain exceeds the associated costs, the individual is likely to proceed with the criminal act.[15] Conversely, if the potential gain is lower than the expected cost, the individual will refrain from committing the offense. Individuals behave rationally in their efforts to maximize personal benefits. Criminal acts are committed when the perceived benefits of violating the law outweigh the penalties or costs of punishment. These costs may include the time invested before and during the commission of the offense, the cost of tools or resources used, the risk of being apprehended, detained, or convicted, and the potential loss of livelihood or employment upon arrest. The benefits, on the other hand, may be tangible, such as wealth or material assets, or intangible, such as personal satisfaction, pleasure, or a sense of fulfillment.

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11 Richard A. Posner, "*Rational Choice, Behavioral Economics and The Law*." Stanford Law Review**,** vol. 50 (1998): 1551.

12 Russel B. Korobkin and Thomas S. Ulen, "*Law and Behavioral Science: Removing The Rationality Assumption from Law to Economics*." California Law Review**,** vol. 88 (2000): 1055.

13 Ibid 1061-1064

14 Thomas J. Miles, "*Empirical Economics and Study of Punishment and Crime*." University of Chicago Legal Forum**,** vol. 237 (2005): 238.

15 Dan M. Kahan, "*Sosial Influence, Sosial Meaning, and Deterrence*." Virginia Law Review**,** vol. 83 (1997): 349.

Cost-benefit analysis is crucial in relation to efforts to combat criminal activity. The issue of criminal enforcement is closely tied to budgetary allocation—specifically, how much in terms of resources and funding should be allocated to carry out criminal enforcement efforts effectively.[16]

Gary Becker offers several important perspectives on rationality as it relates to criminal law:

1) The optimal criminal justice policy. This concept is grounded in cost-benefit analysis and concerns the allocation of resources in the most efficient manner for criminal enforcement. If criminal penalties are sufficiently severe, rational offenders will seek to avoid them, thereby reducing the incidence of crime.[17]

2) The individual's decision about criminal activity. The offender is seen as a rational actor who weighs the costs and benefits of criminal behavior. This includes comparing the time and resources allocated by those who commit crimes versus those who do not, in order to determine which option yields the greatest benefit. Some individuals choose to commit crimes because, for them, the expected gain outweighs the associated costs. To prevent such behavior, the strategy must be to increase the cost of committing a crime, thus reducing its attractiveness. This can be achieved by raising the severity of criminal sanctions or by increasing the likelihood of detection and prosecution. At the same time, the cost of law enforcement should be minimized to ensure efficiency.

3) The existence of a criminal category. This addresses the extent to which criminal law is necessary or justified in regulating certain behaviors.[18]

b) Principle of Efficiency

The next principle is the principle of efficiency, which entails cost-effectiveness, precision, and goal-oriented execution. Efficiency concerns the relationship between the objective and the means used to achieve that objective. If the means employed require more resources than the value of the goal itself, the process is considered inefficient. Conversely, if the means involve fewer costs relative to the intended outcome, the process is deemed efficient.

In the context of economic analysis of criminal law, efficiency relates to two key considerations: first, whether the criminal behaviors targeted by law enforcement can be addressed with minimal expenditure, thereby maximizing the benefits of deterrence; and second, whether the criminal sanctions imposed exceed the benefits gained by the offender from committing the crime. If the penalties outweigh the costs incurred by the offender, it is highly likely that the offender will refrain from engaging in criminal conduct.

Economic analysis, in relation to the principle of efficiency, plays a vital role when considering the imposition of criminal sanctions. The first consideration is the range of

[16] Lewis A. Kornhauser, "*On Justifying Cost and Benefit Analysis*." Journal of Legal Studies, vol. 29 (2000): 1037-1038.
[17] William L. Barnes Jr, "*Revenge on Utilitarianism: Renouncing A Comprehensive Economics Theory of Crime and Punishment*." Indiana Law Journal, vol. 74 (1999): 638.
[18] Ibid 639

available types of criminal sanctions that can be imposed on the offender. From this range, an analysis must be conducted to determine which sanction is most efficient based on a cost-benefit perspective. Generally, criminal sanctions may include the death penalty, life imprisonment, imprisonment for a fixed term, and fines. From an economic standpoint, the most efficient and appropriate forms of punishment when analyzed through the lens of cost-benefit efficiency are the death penalty and monetary fines. In contrast, imprisonment is viewed as less suitable from an economic perspective due to the high social costs associated with incarceration. These costs include the direct expenses of constructing and maintaining prison facilities, paying salaries for prison staff, and the opportunity costs associated with the loss of productivity of incarcerated individuals.[19] Additionally, there are the daily living **costs** that the state must bear for each person imprisoned as a result of their criminal actions.

Regarding imprisonment as a criminal sanction, Professor Barda Nawawi Arief, a Professor of Law at Diponegoro University, asserts that the search for alternatives to imprisonment reflects a selective and limited policy in the use of incarceration—commonly referred to as the principle of parsimony.*[20]* This policy does not aim to abolish imprisonment entirely but rather seeks to avoid the negative impacts and inherent weaknesses of custodial sentences. In this context, the development of alternative sanctions to imprisonment is necessary, with particular attention given to the implementation and execution of prison sentences.

Fines, as a form of monetary sanction, are considered an efficient type of punishment because they impose no direct costs on the state; they merely require the offender to pay a specified amount of money to the government.[21] In the context of tax crime enforcement, fines play a strategic dual role—not only as a punitive measure for unlawful conduct, but also as a mechanism for recovering losses to state revenue. This function sets fines in tax crimes apart from those in other criminal contexts. For example, in corruption cases, fines primarily serve as punishment for the criminal act itself, whereas the recovery of state losses is typically addressed through additional penalties such as restitution payments or asset forfeiture.

However, for criminal fines to be deemed efficient and effective as a deterrent, several factors must be taken into account. There are five key considerations:

1) The offender's assets. The smaller the offender's wealth or assets, the less effective a fine will be in deterring criminal behavior. It is unreasonable to impose a fine on an offender who lacks the financial means to pay it;
2) The likelihood that the offender will not be fined. The higher the probability that an offender will evade financial sanctions, the weaker the deterrent effect of fines;
3) The level of profit gained from the offense. The greater the profit, the higher the fine must be to deter the offense. At the same time, the larger the offender's wealth, the greater the likelihood that the fine can be paid;
4) The probability that the offense will cause losses. This determines the perceived risk and potential harm of the offense;
5) The magnitude of the losses incurred.[22]

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[19] Robert Cooter and Thomas Ullen, Law and Economics, (USA: Eddison Wesley Longman Inc, 2000), 468.

[20] Rugun Romaida Hutabarat, "*Problematika Lembaga Pemasyarakatan dalam Sistem Peradilan Terpadu*." Jurnal Muara Ilmu Sosial, Humaniora dan Seni, vol. 1, no. 1 (April 2017): 42-50.

[21] Mahrus Ali, "*Penegakan Hukum Pidana Yang Optimal (Perspektif Analisis Ekonomi Atas Hukum)*." Jurnal Hukum, vol. 15, no. 2 (April 2008): 223-238.

[22] Steven Shavell, "*Criminal Law and the Optimal Use of Nonmonetary Sanction As Deterrence*." Columbia Law Review**,** vol. 85 (1985): 1236-1238.

From the perspective of sentencing theory, this economic analysis is grounded in deterrence theory. The core assumption of this theory is that humans are rational beings. As such, when an individual commits a crime, the sanction imposed must outweigh the impact of the offense in order to effectively deter it. The primary goal of imposing criminal sanctions is to prevent individuals or society at large from engaging in criminal behavior. Sanctions are intended to ensure that offenders do not reoffend—because if they do, they will face additional and possibly harsher penalties.[23]

In the context of optimal tax investigation, cost-benefit analysis serves as a fundamental framework for assessing whether a tax investigation can be considered efficient and effective. Under this approach, the recovery of losses to state revenue should exceed the costs incurred in carrying out criminal law enforcement. If the term benefit is understood to include the broader impact of enforcement, it is necessary to evaluate whether the criminal activity in question has shown a declining trend which would indicate that enforcement efforts are indeed producing a deterrent effect.

2. The Condition of Criminal Case Handling in the Taxation Sector

To date, the handling of criminal cases in the field of taxation has been largely dominated by offenses involving taxpayer modus operandi related to the issuance and/or use of tax invoices, tax collection receipts, withholding slips, and/or tax payment receipts that are not based on actual transactions, as regulated under Article 39A letter a of the General Provisions and Tax Procedures Law (KUP). Among all cases processed by the Directorate General of Taxes (DGT), this particular modus operandi accounted for 44% in 2020 and 32% in 2021. The second most common offense involved the submission of inaccurate or incomplete Tax Returns (SPT) or related declarations, which constituted 27% of cases in 2020 and 33% in 2021, based on the total number of cases handled by the DGT.

A detailed list of the types of tax crimes handled by the DGT in 2020 and 2021 is presented in Table 1.

Table 1. Modus Operandi of Tax Crimes in 2020–2021[24]

Modus Operandi	2020	2021
False Tax Invoices (IBTS)	44%	32%
Inaccurate or False Tax Returns (SPT)	27%	33%
Failure to Remit Collected Taxes	12%	18%
Failure to Submit Tax Returns	11%	10%
Money Laundering (TPPU)	2%	2%
Corporate Criminal Liability	2%	-

[23] William J. Barnes Jr, "*Revenge on Utilitarianism: Renouncing A Comprehensive Economics Theory of Crime and Punishment*.", 630-631

[24] Processed from data provided by the Directorate of Law Enforcement, Directorate General of Taxes.

Failure to Register for NPWP/PKP	**1%**	**3%**
Misuse of NPWP/PKP	**1%**	**3%**

The ultimate objective in handling tax crimes involving the aforementioned types of offenses is the recovery of losses to state revenue. However, with the revocation of Article 13(5) and Article 15(4) of the Job Creation Law (Undang-Undang Cipta Kerja), the Directorate General of Taxes (DGT) no longer has the legal authority to collect outstanding tax liabilities (tax principal) once a case has entered the criminal justice process. Consequently, the recovery of state revenue losses may only occur in the following circumstances:

a. The taxpayer may utilize the principle of *ultimum remedium* by voluntarily disclosing the inaccuracy of their actions in accordance with the actual situation (Article 8 paragraph (3) of the KUP Law), provided that the Notification Letter of Commencement of Investigation (SPDP) has not yet been submitted to the Public Prosecutor. Alternatively, the taxpayer may submit a request for investigation termination (Article 44B of the KUP Law) during the investigation or court proceedings. The *ultimum remedium* principle is exercised by the taxpayer, suspect, or defendant through full payment of the losses to state revenue along with the applicable penalties.

b. The taxpayer or convicted individual settles the criminal fine imposed by a final and binding court decision, in cases where they do not exercise the *ultimum remedium* principle. This payment may be made voluntarily or through asset seizure as part of the court's execution process against the convicted person's property.

The current condition reflects that the recovery of losses to state revenue is not yet optimal, due to several underlying issues:

a. The principle of *ultimum remedium* in tax criminal law is interpreted and implemented inconsistently in practice:

   - As a mandatory sequence of procedures within the tax law enforcement system, where administrative measures must be exhausted before criminal prosecution can be initiated;

   - As a discretionary option, whereby if the Director General of Taxes has chosen to pursue criminal enforcement, the state may no longer impose administrative actions such as tax assessments and collections on the same tax object that has been subject to criminal proceedings;

   - Or, as applicable only to administrative offenses committed by actual business operators—that is, taxpayers engaged in legitimate business activities—as a means to instill deterrence and ensure their return to compliance and accountability. This interpretation excludes perpetrators who exploit tax instruments solely as tools for committing financial crimes or for unlawfully draining state funds.

b. The provisions related to losses to state revenue, as stipulated in Articles 38, 39, 41C, and 44B of the General Provisions and Tax Procedures Law (KUP), only regulate formal aspects and do not elaborate further on substantive matters such as the definition, burden of responsibility, or authority to calculate the amount of losses to state revenue. On the other hand, losses to state revenue serve as a crucial consideration in determining the appropriate course of action in handling tax crime cases, particularly given the role of taxation as a vital instrument for mobilizing public funds essential to state administration.

   In practice, at various stages of the tax crime case handling process, there remains disparity in the allocation of state revenue losses, particularly in cases where the offense is committed jointly by multiple parties. One prevailing view holds that the burden of losses to state revenue should be apportioned proportionally based on each actor's role, the benefits received, or the gains obtained. On the other hand, another perspective maintains that each offender should be held fully liable for the entire amount of the state revenue loss.

c. The payment of state revenue losses and/or penalties during court proceedings, or after the case has been transferred to the judiciary, does not nullify the Public Prosecutor's charges. This condition discourages defendants from paying restitution and sanctions during the trial stage.

d. Taxpayers tend to avoid exercising the ultimum remedium principle during the investigation phase, based on the assumption that criminal fines may either be substituted (subsider) with imprisonment or may not be enforced by the prosecutor. From the total number of investigation orders completed between 2017 and 2021—whether resulting in case files declared complete or in investigation termination accepted by the Public Prosecutor—only 4.44 percent were resolved through investigation termination in the interest of revenue recovery, as regulated under Article 44B of the KUP Law (see Table 2).

Table 2. Tax Crime Investigation Activities in 2017–2021[25]

Year	Investigation Orders Issued	Case Files (P-21)		Termination of 44B		Asset Seizure	
		Total	Recovered State Revenue (Rp)	Total	Restituted State Revenue (Rp)	Total	Total Asset Value (Rp)
2017	44	65	267.269.644.604	2	2.691.313.420	-	-
2018	135	124	1.118.570.551.039	3	963.112.248	-	-
2019	151	138	1.197.421.569.699	6	33.477.886.538	4	276.951.404.000

[25] Processed from data provided by the Directorate of Law Enforcement, Directorate General of Taxes.

2020	117	97	373.633.925.778	3	36.900.950.890	11	90.006.601.223
2021	86	93	1.222.051.072.862	10	24.157.708.916	46	1.065.818.086.303

e. Criminal fines are often substituted with imprisonment (subsider) because judges consider Article 30 paragraph (2) of the Indonesian Penal Code (KUHP), which states that if a fine is not paid, it shall be replaced with imprisonment. Pursuant to Article 30 paragraph (6) of the Penal Code, the substitute imprisonment may not exceed eight months. Based on final and binding court decisions (inkracht) from 2018 to 2020, 80.66 percent of the total value of criminal fines were substituted with imprisonment (see Table 3). As a result, when criminal fines are replaced with imprisonment, no recovery of losses to state revenue occurs.

Tabel 3 Data Pidana Denda Hasil Penuntutan yang Dibayar Terpidana

Tahun 2018 s.d. 2020[26]

Tahun	Total Criminal Fines (Non-Substitutable and Substitutable)		Non-Substitutable Criminal Fines		Criminal Fines Paid (Rp)	Percentage of Fines Paid	
						of Total Fines	of Non-Substitutable Fines
	Jml	Rp	Jml	Rp			
2018	73	1.796.688.066.304	43	1.214.558.880.550	2.365.406.172	0,132	0,195
2019	93	5.325.551.509.711	9	123.356.689.754	778.890.699	0,015	0,631
2020	91	1.703.907.164.216	10	368.926.754.292	1.287.297.992	0,076	0,349
Total	257	8.826.146.740.231	62	1.706.842.324.596	4.431.594.863	0,050	0,260

f. The execution of criminal fines by prosecutors has proven to be statistically insignificant. Based on final and binding court decisions between 2018 and 2020, only 0.26 percent of the total value of criminal fines were not substituted with imprisonment, and only 0.05 percent of the total value of criminal fines were actually recovered through execution by the prosecutor (see Table 3). As a result, when prosecutorial execution yields minimal results, the recovery of losses to state

[26] Processed from data provided by the Directorate of Extraordinary Legal Remedies, Execution, and Examination, Deputy Attorney General for Special Crimes.

revenue through fine payments becomes negligible.

g. There is no deterrent effect on offenders, nor any preventive effect on potential offenders, as most perpetrators only serve custodial sentences (imprisonment or confinement) without being required to pay criminal fines. In such cases, the state not only fails to recover losses to state revenue, but also incurs additional expenditures to maintain inmates in prison.

h. Pre-trial motions (praperadilan) are frequently used by tax crime suspects as a strategy to evade substantive judicial proceedings and delay sentencing. According to data from the Directorate General of Taxes (DGT), most pre-trial objections relate to challenges against the suspect designation. Of the 54 pre-trial rulings issued between 2015 and 2020: 21% challenged the preliminary evidence audit (investigation) conducted by the DGT, 15% questioned the application of the ultimum remedium principle, 14% raised objections based on the statute of limitations (daluwarsa), 7% related to bankruptcy (pailit), and the remaining 43% involved various other legal objections. In contrast, based on trial data from 2015 to 2019, 256 tax crime cases were adjudicated. Of these, 5 cases resulted in acquittals, while 251 resulted in convictions involving imprisonment and/or fines. This means that once a case proceeds to substantive trial, 98% of tax crimes are proven in court. This is precisely what suspects attempt to avoid by resorting to pre-trial motions, thereby delaying the enforcement of sanctions and obstructing the recovery of losses to state revenue.

3. Economic Analysis of Tax Investigation

The fundamental principle of optimal tax investigation is based on the idea of maximizing the recovery of losses to state revenue. In designing criminal provisions within tax regulations, the Directorate General of Taxes (DGT) must take into account the maximum potential for recovering state revenue losses. Within the framework of economic analysis of tax criminal law, the recovery of state revenue losses can be achieved by calculating the total amount of losses caused by tax crimes, adding the costs incurred during the investigation process, and subtracting the amount of losses and penalties or criminal fines paid by the tax offender.

If the losses to state revenue and the costs incurred by the Directorate General of Taxes (DGT) including those spent in coordination with other law enforcement agencies—to address tax crimes exceed the amount of revenue loss and the fines or penalties paid by the tax offender, then the objective of optimizing tax investigations cannot be achieved. Therefore, efforts must focus on strengthening the functions of prevention, detection, and early warning in relation to tax crimes. In other words, when the cost of investigating a tax crime, combined with the losses incurred, exceeds the amount of recovered losses and sanctions paid, the preferred and prioritized strategy should be preventive enforcement in the field of taxation.

Another important measure is to increase the likelihood of recovering losses to state revenue through the payment of such losses along with applicable penalties, calculated based on the total amount of revenue lost by the taxpayer, suspect, or defendant. These payments may be made during the investigation, prosecution, or trial stages. Under the restorative justice approach, it is expected that such payments can

serve as the basis for the Attorney General to exercise the authority to dismiss a case in the public interest (in this case, the interest of state revenue recovery) during the investigation and prosecution stages. Moreover, this payment may also be considered by the public prosecutor as grounds to seek non-custodial sentencing during trial proceedings. The dual benefit of restorative justice lies in the fact that the state recovers revenue through restitution and penalties, while also saving public expenditure by avoiding the costs of incarcerating offenders in correctional facilities.

Nevertheless, efforts to increase the likelihood of recovering losses to state revenue through payment of such losses and applicable penalties by the taxpayer, suspect, or defendant must be accompanied by the following measures:

1. A policy to enforce the principle of *lex specialis derogat legi generali* specifically through its derivative *lex specialis systematis* in relation to Article 30 paragraph (2) of the Penal Code (KUHP). In this context, in the interest of tax revenue, criminal fines should not be substitutable with imprisonment, and must be paid by the convicted person, either voluntarily or through the asset seizure execution mechanism. If fines continue to be substitutable with imprisonment, or if asset seizure is not executed when the fines remain unpaid, then based on the principle of rationality a tax offender, as a rational economic actor, will weigh the benefits of not utilizing the opportunity for investigation or prosecution termination against the costs associated with paying restitution and penalties, calculated based on the amount of state revenue lost.

2. A policy to seize assets owned by the taxpayer or suspect during the investigation phase. This is essential to safeguard the offender's assets early on as a guarantee for the payment of criminal fines. Without the authority to seize assets at this stage, and in accordance with the rationality principle, offenders will respond to threats rationally and attempt to maximize their wealth by transferring or concealing assets before being sentenced with a fine.

When the probability of recovering state revenue losses is high, tax investigations are more likely to be optimal, and the number of taxpayers committing tax crimes is expected to decline. As a result, less funding is required to address tax crimes and support investigation operations. Furthermore, if the total value of recovered losses and penalties or fines paid exceeds the losses incurred and the costs borne by DGT and other law enforcement bodies, then such enforcement constitutes an efficient criminal sanction.

A person will engage in tax crimes based on the opportunities and choices available. When opportunities are abundant, deterrence requires increasing the likelihood of state revenue recovery, either through restitution and penalties or criminal fines. Only by doing so can tax investigations be truly optimal, and the recovery of losses to state revenue the primary objective be fully realized.

C. CONCLUSION

Based on the foregoing discussion, the author draws the following conclusions:

1. Tax criminal law is classified as *lex specialis systematis*, a derivative of the legal principle *lex specialis derogat legi generalis*. This classification is supported by the following considerations: (a) The substantive provisions regarding tax crimes in tax legislation are of a special nature; (b) The General Provisions and Tax Procedures Law (KUP) regulates procedural criminal law that deviates from the Criminal Procedure Code (KUHAP); (c) The legal subject liable to be prosecuted under tax criminal law is also specific, namely the taxpayer.

2. In legal doctrine, tax criminal law is recognized as *ius singulare*, a body of law with unique characteristics that are inherently economic in nature, aimed at maximizing state revenue. The principal objective in the criminal prosecution of tax offenses is the maximization of recovery for losses to state revenue. From an economic analysis perspective, this recovery is achieved by calculating the total losses to state revenue caused by the offense, adding the costs of investigation, and subtracting the amounts recovered through restitution and criminal fines paid by the offender.

3. Fines play a strategic dual role in the handling of tax crimes, serving both as a sanction for unlawful conduct and as a mechanism for restoring losses to state revenue. Therefore, early asset safeguarding of the taxpayer or suspect is crucial to guarantee the payment of fines.

4. During the investigation, prosecution, or trial stages, the taxpayer, suspect, or defendant may pay the losses to state revenue along with the applicable penalties, calculated based on the amount of state revenue lost. Under the restorative justice approach, such payments are expected to serve as the basis for the Attorney General to exercise the authority to dismiss the case in the public interest (in this case, state revenue recovery) during the investigation and prosecution stages. The dual benefit of this approach is that the state recovers lost revenue while simultaneously reducing expenditures related to the incarceration of offenders.

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