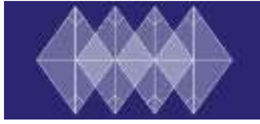

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SENTENCING DISPARITY IN TAXATION AND EFFORTS TO OVERCOME THE CONSEQUENCES (Part 1 of 2)

Didit Santoso[1], Henry D. P. Sinaga[2]

[1] *Trisakti University, Jakarta, Indonesia. E-mail: diditedu888@gmail.com*

[2] *Law Doctoral Program, Universitas Diponegoro, Semarang. Indonesia. E-mail: sinagahenrydp@gmail.com*

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Abstract

The juridical and empirical gaps that occur in many criminal decisions in the field of taxation in Indonesia still cause frequent sentencing disparity problems without a clear justification. It is necessary and urgent to conduct a normative juridical study in answering 2 (two) formulations of existing problems, considering that the primary function of taxes is the budgetary function and the function of regulating (regulerend). It is concluded that currently, there is only Article 44B of the KUP Law that can reduce sentencing disparity in the field of taxation in Indonesia, so the concept of equality before the law and checks and balances are needed in handling sentencing disparity in Indonesia, which generally consists of disparity across the integrated criminal justice system, horizontal judicial disparity, and vertical judicial disparity. It is suggested that there should be a Supreme Court Regulation on Guidelines for Sentencing of Taxation Crimes and a Supreme Prosecutor's Regulation on Guidelines for Prosecution and Pre-Prosecution of Criminal Acts in the Field of Taxation, examination, and public dissemination of every decision that results in a decision containing sentencing disparity without a clear justification, and strengthening the supervisory institutions of each integrated criminal justice system, such as the Judicial Commission, and the Supreme Court.

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1. INTRODUCTION

Implementing an integrated criminal justice system in Indonesia (especially concerning investigation, prosecution, and trial) still causes sentencing disparity in its implementation. The sentencing disparity becomes essential if the convict feels victimized by applying unequal punishment for the same criminal offense or for criminal offenses detrimental to state finances that can be compared without a clear justification.[1] This also occurs in many cases of criminal offenses in the field of taxation, whose urgency of study cannot be separated from the juridical and empirical gaps.

[1] Puslitbang Hukum dan Peradilan Mahkamah Agung Republik Indonesia, *Kedudukan dan Relevansi Yurisprudensi Untuk Mengurangi Disparitas Putusan Pengadilan: Laporan Penelitian,* Jakarta: Penerbit Balitbang Pendidikan dan Pelatihan Hukum dan Peradilan Mahkamah Agung Republik Indonesia, 2010, p. 3.

The juridical gap cannot be separated from the legal basis of each law enforcer involved in handling criminal offenses in the field of taxation. The orientation of investigation and prosecution of criminal offenses in the field of taxation tends to be legalism and positivism that consciously or unconsciously cultivates the law,[2] as the Fourth Amendment to Article 23A of the 1945 Constitution of the Republic of Indonesia (UUD NRI Tahun 1945) which formulates that tax collection must be based on law and Article 1 paragraph (1) of the Criminal Code (KUHP) confirms the principle of legality in crime. Meanwhile, the legal basis for judges in adjudicating a case is Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power (Judicial Power Law) which has emphasized that Judges and Constitutional Judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society.

The empirical gap in sentencing disparity in taxation can be seen from many cases that have been sentenced, which seem to ignore the equality before the law principle, even though the justification is the freedom given by the Judicial Power Law to judges in deciding a case. Some of the differences in punishment for perpetrators of criminal acts in the field of taxation can be seen in Table 1 below, which presents a variety of decisions on the offense of "deliberately issuing and/or using tax invoices that are not based on actual transactions" as referred to in Article 39A letter a of Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation as amended several times, most recently by Law Number 7 of 2021 concerning Harmonization of Tax Regulations (UU KUP)

Table 1
Some Disparity in Verdicts "Intentionally issuing and/or using tax invoices that are not based on actual transactions.

Decision Number	Content and Basis of Decision	Sentencing Disparity
The decision of the Bandung High Court 38/PID.SUS/2020/PT.BDG dated February 11, 2020	It states that Defendant was proven legally and convincingly guilty of committing the crime of jointly deliberately issuing tax invoices that are not based on actual transactions continuously as a continuing act. So that he was sentenced to imprisonment for 4 (four) years and a fine of 2 X Rp. 53.49 billion or a total of Rp. 106.98 billion, provided that if the fine is not paid, it will be replaced by imprisonment for 3 (three) months.	All decisions decided that the defendant was legally and convincingly proven to have committed a tax crime as regulated and punishable in Article 39 A of the KUP Law. Although the criminal provisions against any person who intentionally issues and or uses tax invoices that are not based on actual transactions will be punished with imprisonment for a minimum of 2 (two) years and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of tax in the tax invoice and a maximum of 6 (six) times the amount of tax in the tax invoice. The

[2] Henry D. P. Sinaga, Expanding Access to Justice through E-Investigation: Strengthening the Prosecution Authorithy in Indonesia, *The Scientia Journal of Social and Legal Studies*, Vol. 1, No. 1, 2022, p. 63.

The decision of the Central Java High Court No. 55/Pid.Sus/2018/PTSMG dated April 5, 2018 affirmed by the Supreme Court Cassation Decision No. 1482 K/Pid.Sus/2018 dated August 10, 2018	Affirming the decision of the Semarang District Court Number: 790/Pid.Sus/2017/PNSmg. Dated January 10, 2018, states that the defendant is legally and convincingly proven guilty of committing a criminal act "Deliberately jointly and continuously issuing tax invoices that are not based on actual transactions". Thus, the defendant was sentenced to imprisonment for 2 (two) years and a fine of 2 X Rp.4, 38 billion (Rp.8.77 billion), provided that if the defendant does not pay the fine within 1 (one) month after the decision has permanent legal force, it will be replaced by imprisonment for 3 (three) months.	provision of termination of investigation is only carried out after the taxpayer or suspect has paid the amount of tax in the tax invoice as referred to in Article 39A coupled with administrative sanctions in the form of a fine of 4 (four) times the amount of tax in the tax invoice, there are criminal disparities in several decisions, among others: 1. Decision No. 1824 K/Pid.Sus/2018, with a total loss to state revenue of IDR 10.51 billion, was sentenced to imprisonment of 3 (three) years and 6 (six) months and a 2 x IDR 10.51 billion fine. Meanwhile, Decision No. 38/PID.SUS/2020/PT.BDG with a total loss to state revenue of Rp. 53.49 billion was sentenced to imprisonment for 4 (four) years and a fine of 2 X Rp. 53.49 billion, and Decision No. 689 K/Pid.Sus/2018, with a loss to state revenue of Rp103.85 billion, was sentenced to imprisonment for 3 (three) years and 6 (six) months and a fine of 3 x Rp103.85 billion. 2. There is horizontal criminal disparity at the district court level that decides the same offense with different fines and or imprisonment. 3. There is a vertical disparity in punishment, as reflected in the verdicts between the District Court, the High Court,
Sidoarjo District Court Decision Number 133/Pid.B/2020/PN SDA dated April 27, 2020 confirmed by the Supreme Court Cassation Decision Number 1791 K/Pid.Sus/ 2021 dated June 24, 2021	The defendant was proven legally and convincingly guilty of committing the crime of "Participation in the use of tax invoices, which are not based on actual transactions, in a continuous manner. Thus, he was sentenced to imprisonment for 2 (two) years and a fine of 2 (two) times the loss to state revenue in the form of tax payable that is not or underpaid, namely 2 (two) X Rp227.83 million (Rp. Rp455.67 million).	
Supreme Court Cassation Decision Number 689 K/Pid.Sus/2018, dated June 7, 2018	To impose a prison sentence of 3 (three) years and 6 (six) months to the Defendant and a fine of 3 x Rp103.85 billion (Rp311.55 billion), provided that if the fine is not paid, it will be replaced by imprisonment for 6 (six) months.	

Supreme Court Cassation Decision Number 2486 K/Pid.Sus/2018, dated November 12, 2018	The defendant has been proven beyond a reasonable doubt to have committed the crime of "USING TAX INVOICES THAT ARE NOT BASED ON ACTUAL TRANSACTIONS THAT ARE CONTINUOUSLY PERFORMED." Therefore, the defendant is sentenced to 1 (one) year and 6 (six) months in prison and a fine of 2 times Rp4.32 billion (Rp8.64 billion). It is stipulated that if the defendant does not pay the fine within 1 (one) month after the court's decision has obtained legal force, the defendant's assets may be seized by the prosecutor and auctioned to cover the fine. If the convicted person has insufficient assets to pay the fine, the defendant will be sentenced to 6 (six) months in prison.	and/or the Supreme Court. 4. There is a disparity in punishment from the magnitude of state revenue losses caused by imprisonment and fines for each example of the verdict.
The Supreme Court Cassation Verdict Number 1824 K/Pid.Sus/2018, dated September 27, 2018	states that the defendant has been proven beyond a reasonable doubt to have committed the crime of "Intentionally participating in the issuance and/or use of tax invoices that are not based on actual transactions." Therefore, the defendant is sentenced to 3 (three) years and 6 (six) months in prison and a fine of 2 times Rp10.51 billion (Rp21.03 billion). It is stipulated that if the convicted person does not pay the fine within 1 (one) month after the court's decision has obtained legal force, the defendant's assets may be seized by the prosecutor and auctioned to cover the fine. If the convicted person has insufficient assets to pay the fine, the sentence will be replaced with 6 (six) months in prison.	

The Supreme Court Cassation Verdict Number 1109 K/PID.SUS/2016 dated December 14, 2016 on the request for cassation by the Prosecutor against the Not Guilty Verdict of the Palembang District Court No. 394/Pid.sus/2015/PN Plg dated December 15, 2015.	Rejected the Prosecutor's cassation request. The verdict of the Palembang District Court No. 394/Pid.sus/2015/PN Plg acquitted the defendant of the charges and from the demand for state revenue losses amounting to Rp. 99.39 billion	The Prosecutor's criminal charges at the Palembang Prosecutor's Office on November 18, 2015 are as follows: 1. Declaring the defendant to be proven guilty of the crime of "INTENTIONALLY ISSUING TAX INVOICES THAT ARE NOT BASED ON ACTUAL TRANSACTIONS THAT ARE CONTINUOUSLY PERFORMED." 2. Sentencing the defendant TEDDY EFFENDI alias TEDDY to 3 (three) years and 6 (six) months in prison, reduced while the defendant is in custody, and imposing a fine of 3 times Rp33.13 billion (totaling Rp99.39 billion) on the defendant.

There have been many studies on sentencing disparity, but most are related to drug offenses[3] and corruption crimes. Most studies on the sentencing disparity in Indonesia still focus on the formal legal aspects of decisions. At the same time, only a few quantitative studies attempt to investigate differences in punishment but are shallow and only assess a few decisions related to one type of violation in one location.[4] The tendency that has occurred so far is that the variable evaluated is the difference in the severity of the punishment imposed by judges for similar offenses without considering other variables, such as the level of loss, mitigating or aggravating considerations, etc. In addition, due to the disparity that occurs, each level of court (lower court, high court, and Supreme Court) does not publish general information, such as average sentences for certain violations, analysis, and dissemination related to specific verdicts. The variables evaluated in the existing literature mainly focus on the difference in the severity of the punishment imposed by judges for similar offenses without considering other variables, such as the level of loss, mitigating or aggravating considerations, etc.[5] Studies that focus on criminal disparities in the field of taxation are still scarce, even though many judicial decisions related to tax crimes show that for the same offense, there are still various applications of punishments that are not the same or for a comparable crime, there are very different verdicts or justifications or the severity of the punishment imposed.

[3] Muhammad Romdoni and Surastini Fitriasih, Disparitas Pemidanaan dalam Kasus Tindak Pidana Khusus Narkotika di Pengadilan Negeri Tangerang, *Masalah-Masalah Hukum*, Vol. 51, No. 3, 2022, p. 288.
[4] Rifqi Sjarief, Criminal Sentencing in Indonesia: Disparity, Disproportionality and Biases, A Doctoral Thesis of Melbourne Law School of the University of Melbourne, September 2020.
[5] *Loc.cit.*

The existence of sentencing disparity, supported by several legal decisions and juridical studies, as well as the lack of research on criminal disparities in the field of taxation in Indonesia, will have several implications, including the imposition of different punishments, undermining justice in society, and contradicting the philosophy of criminal punishment because it will not create a deterrent effect for offenders and may be followed by other offenders, endangering the credibility of the judiciary due to public distrust.[6] Therefore, it is necessary and urgent to answer the existing two problem formulations. First, how is the regulation of sentencing disparity in the field of taxation in Indonesia? Second, what is the ideal legal concept for handling sentencing disparity in the field of taxation in Indonesia?

2. LITERATURE REVIEW AND THEORETICAL FRAMEWORK

a. Sentencing Disparity and Its Literature Review

Although the Supreme Court of the Republic of Indonesia has developed a framework of thought for sentencing disparity by defining it as the unequal application of punishment for the same offense or offenses of comparable seriousness without clear justification,[7] it is essential to understand the ideas or thoughts on the criminal disparity that several legal experts have expressed. Brantingham criticized unjustified disparities in cases considered similar but treated differently rather than when different cases are given different punishments. Punishment disparities should involve identifying factors that should be considered in sentencing, as it raises several normative questions, such as whether judges should consider the facts of the case, the background of the individual being sentenced, or the potential for recidivism.[8] Based on empirical evidence on disparities in punishment, Frisch concluded that addressing the limitations of constitutional equality principles is a means of identifying and tracking practical efforts to address disparities in punishment. Specific actions can be taken by introducing prosecution guidelines and trial manuals for certain types of offenses that are frequently committed.[9]

Furthermore, Suhariyanto emphasizes that sentencing disparity not only means the difference in the severity of punishment imposed on the defendant in a similar case but also includes differences in release or exemption from punishment without being based on the exact legal definition.[10] The confusion of definitions or the ambiguity of the formulation of a legal definition can lead to multiple interpretations, resulting in differences in the treatment of offenders whose offenses are proportionate.[11]

Therefore, it can be concluded that, in terms of the criminal justice system, disparities in punishment can have a broad impact because they involve constitutional considerations between individual freedom and the state's right to punish. This indicates the failure of a

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[6] Melani, A Disparity in Judge's Interpretation on Article 2 and 3 of the Law on Corruption Eradication, *Jurnal Yudisial,* Vol. 7, No. 2, 2014, p. 115.

[7] Puslitbang Hukum dan Peradilan Mahkamah Agung Republik Indonesia, *Op.cit.,* p. 6.

[8] Patricia L. Brantingham, Sentencing Disparity: An Analysis of Judicial Consistency, *Journal of Quantitative Criminology*, Vol. 1, No. 3, 1985, p. 282.

[9] Wolfgang Frisch, From Disparity in Sentencing Towards Sentencing Equality: The German Experience, *Criminal Law Forum*, Vol. 28, Issue 3, September 2017, p. 437.

[10] Budi Suhariyanto, Settlement of Disparity in "Ciriminalized" Public Official Making and Implementing Public Policy, *Jurnal Penelitian Hukum De Jure*, Vol. 18, No. 3, 2018, p. 361.

[11] *Loc.cit.*

system to achieve justice equality in the rule of law and can weaken public trust in the criminal justice system.[12]

Many studies have been on sentencing disparity, particularly related to drug crimes and corruption. One study on drug-related sentencing disparity was conducted by Romdoni and Fitriasih, analyzing verdicts on several offenses under the 2009 Narcotics Law.[13] Meanwhile, Melani studied sentencing disparity in corruption cases, particularly in interpreting Articles 2 and 3 of the 1999 Anti-Corruption Law (amended by Law No. 20 of 2001),[14] while Alfitra examined disparity in pretrial decisions.

Romdoni and Fitriasih's study found the sentencing disparity in several offenses under the Narcotics Law. For example, under Article 112(1) of the Narcotics Law, offenses with similar levels of severity resulted in vastly disproportionate prison sentences, with a minimum sentence of 4 years. However, varying subsiders are imposed based on different types of evidence. A single panel of judges also imposed subsiders of 6 months and three months for the same offense. Furthermore, different panels of judges issued five separate rulings with varying subsiders of 2-6 months for the same offense. Similarly, under Article 114(1) of the Narcotics Law, prison sentences were disproportionately high or low depending on the amount of evidence. One panel of judges imposed a sentence of 5 years with a 6-month subsider, while another imposed a sentence of 5.6 years with a 2-month subsider. Four panels of judges issued sentences ranging from 5-6 years with subsiders of 2-6 years for the same offense. Finally, under Article 127(1)(a) of the Narcotics Law, there were instances where medical and social rehabilitation charges were made in one ruling while not in another. The defendants were still ordered to undergo rehabilitation in three other rulings that did not follow Supreme Court Circular No. 4 of 2010. Judges imposed varying prison sentences ranging from 1-4 years, which violated the law's provisions. Additionally, judges imposed longer prison sentences for offenses involving smaller amounts of narcotics and vice versa, indicating a disproportionate sentencing practice.[15]

Melani's study concluded that there had been a disparity in the interpretation of Article 2 and Article 3 of the Corruption Eradication Law (UU PTPK), both horizontally and vertically. Horizontal disparities occur among first-level and higher-level corruption court decisions, as well as among Supreme Court decisions. Vertical disparities occur between first-level corruption courts and subsequent-level corruption courts. Restrictive interpretations, which narrow the understanding of every person in Article 2 and Article 3 of the UU PTPK, are often done by first-level and subsequent-level corruption court judges who take over all legal considerations of first-level corruption court and strengthen first-level corruption court decisions. This restrictive interpretation is incorrect because it contradicts the criminal law umbrella, namely the Criminal Code (KUHP). Under the KUHP, the penalty for crimes committed in an official capacity is increased by one-third of the penalty for ordinary crimes (Article 52 of the KUHP). In contrast, with this restrictive interpretation, civil servants/officials cannot be charged under Article 2 of the UU PTPK (unlawful acts). They can only be charged under Article 3 of the UU PTPK (abuse of authority), whose minimum sentence is much lower than Article 2 of the UU PTPK.[16]

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[12] Muladi dan Barda Nawawi Arief, *Op.cit.*, p. 72.

[13] Muhammad Romdoni and Surastini Fitriasih, *ibid.*, p. 290.

[14] Melani, *Op.cit.*, p. 103.

[15] Muhammad Romdoni and Surastini Fitriasih, *Loc.cit.*

[16] Melani, *Op.cit.*, p. 115.

Furthermore, Alfitra's study states that sentencing disparity in pretrial cases occurs due to the different legal schools of thought adopted by judges: classical, modern, and neoclassical.[17] The classical school determines the punishment precisely by lawmakers without allowing differences in punishment, so the issue of sentencing disparity will not arise if this school is followed.[18] The modern school teaches that punishment depends on the criminal case or has different needs, so it can be justified that sentencing disparity is allowed according to this school.[19] The neoclassical school, which originates from the classical school and develops due to being influenced by the modern school, assumes that the cause of crime may be due to pathology, incapacity, mental illness, the acceptance of circumstances that can mitigate physical, environmental, or mental punishment, as well as the implementation of partial criminal responsibility in particular circumstances such as insanity, underage, or other circumstances that can affect one's knowledge and intent at the time of the crime, the allowance of expert witnesses to determine the degree of responsibility.[20] Therefore, the neoclassical school justifies sentencing disparity. Even though sentencing disparity occurs due to differences in legal schools of thought adopted by judges, according to Alfitra, pretrial disparities in the determination of suspects in the investigation phase in corruption cases by the Corruption Eradication Commission (KPK) results in the sense of injustice and causes suspects and the public to lose respect for the law, ultimately becoming one of the indicators of the failure of the system to achieve justice in the rule of law[21] and at the same time indicates the weakness of the checks and balances doctrine in the integrated criminal justice system and the criminal justice system in court.

b. The Principle of Equality Before the Law and the Doctrine of Checks and Balances in Sentencing Disparity

It is ironic that in empirical reality, many criminal cases still show the disparity between legal certainty and justice in imposing criminal sanctions in Indonesia,[22] including in tax law. It requires an ideal legal concept for handling sentencing disparity in the field of taxation in Indonesia based on the principles of equality before the law and the doctrine of checks and balances.

The neglect of these principles can be seen from the need for more guidance the Supreme Court provides to judges regarding punishment related to tax crimes, even though taxes are a source of state revenue to finance state expenditures. Therefore, it is challenging to answer fundamental questions in Indonesia's context of tax crimes because the amount of relevant data and research available is minimal. For example, how do judges who decide tax crimes in Indonesia use their broad discretion? Considering that a) there are many criminal provisions in several tax-related laws, such as the Taxation Law, Law Number 8 of 2010 on Prevention and Eradication of Money Laundering Crimes, Law Number 9 of 2017 concerning the Determination of Government Regulation Substituting Law Number 1 of

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[17] Alfitra, Disparitas Putusan Praperadilan dalam Penetapan Tersangka Korupsi oleh KPK, Jurnal Cita Hukum, Vol. 4, No. 1, 2016, p. 82.

[18] *Ibid.*, pp. 82-83.

[19] *Loc.cit.*

[20] *Ibid.*, p. 82.

[21] *Ibid.*, p. 83.

[22] Pricillia Putri Ervian Sitompul, Pidana Pengawasan: Paradigma Baru dalam Penjatuhan Sanksi Pidana Terhadap Narapidana Lanjut Usia, in Ridwan Arifin, Sonny Saptoajie Wicaksono, Reyhan Satya Prawira, and Nur Ika Ayu Apriliana (Eds.), *Kerangka Pembaharuan Hukum Pidana Dalam Sistem Peradilan Pidana di Indonesia*, Semarang, Badan Penerbit Fakultas Hukum Universitas Negeri Semarang, 2020, p. 20.

2017 concerning Financial Information Access for Tax Purposes, Law Number 12 of 1985 on Land and Building Tax as amended by Law Number 12 of 1994, Stamp Duty Law, and Law Number 19 of 1997 concerning Tax Collection by Force, and b) most of the laws governing criminal tax provisions include not only maximum penalties but also minimum penalties.[23] Then, other questions arise, such as: what are the parameters of the punishment practices imposed by judges for certain violations? How do judges determine what type of punishment will be applied and how severe the punishment should be? What are the factors that influence judges in imposing sentences? Are judicial sentences (statistically) experiencing disproportionality and significant differences?[24].

The principle of equality before the law is guaranteed in the Indonesian Constitution, as stated in Article 27 (1), which reads, "all citizens are equal before the law and government and must uphold the law and government without exception," and Article 28D (1) which states "every person has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law." This principle is also regulated in criminal procedure law and the Judicial Power Law, as stated in Point 3a of the General Explanation of the Criminal Procedure Code, which formulates "equal treatment of every person before the law without discrimination" and Article 4 of the Judicial Power Law which emphasizes that "the court shall adjudicate according to the law without discrimination."[25] Some laws regulate the suspension of the principle of equality before the law as mandated in Article 27 (1), and Article 28D (1) of the Indonesian Constitution, namely for government officials reflected through special rights. However, the suspension is not immunity from criminal accountability but is somewhat procedural.[26]

There are several thoughts regarding the principle of equality before the law. Suka'arsana and Wangga interpret the principle of equality before the law or equal treatment before the law of every member of society as every member of society, including ordinary citizens and officials, must receive equal treatment in both substantive criminal law and procedural law. Equal treatment in substantive criminal law refers to every person abiding by and respecting the criminal law rules, prohibited or required, that have been regulated in the law as prohibited acts.[27] Waliden et al. affirm that the principle of equality before the law, an essential principle in law and a key to the rule of law doctrine often applied by many countries, including Indonesia,[28] contains the meaning of equality and equal treatment under the law for each person without exception.[29] Furthermore, Irianto highlights the principle of equality before the law as a fundamental provision of human rights concerning universal provisions and an inseparable part of a modern democratic state.[30]

[23] Denny Irawan, On One Continued Act in Tax Crime in Indonesia, Scientia Business Law Review, Vol. 1, No. 2, 2022, pp. 42-43.

[24] Rifqi Sjarief, *Loc.cit.*

[25] I Komang Suka'arsana and Maria Sylvya E. Wangga, Pengesampingan Prinsip Persamaan Dimuka Hukum atas Izin Pemeriksaan Pejabat Negara, *Masalah-Masalah Hukum*, Vol. 45, No. 1, 2016, p. 12.

[26] I Komang Suka'arsana and Maria Sylvya E. Wangga, *Op.cit.*, p. 17.

[27] *Loc.cit.*

[28] Ibnu Alwaton Surya Waliden, Selvia Fitri Maulida, dan Mochammad Agus Rachmatulloh, Tinjauan Asas Equality Before the Law terhadap Penegakan Hukum di Indonesia, *Verfassung: Jurnal Hukum Tata Negara*, Vol. 1, No. 2, 2022, p. 130.

[29] *Ibid.*, p. 134.

[30] Sigit Irianto, Kedudukan Yang Sama di Depan Hukum (Equality Before the Law) Dalam Penegakan Hukum di Indonesia, *Hukum dan Dinamika Masyarakat*, vol. 5, No. 2, 2008, p. 208.

Understanding of the doctrine of checks and balances can be studied from several legal studies. Chandranegara explains that the doctrine of checks and balances is a combined conception of power that provides constitutional power to balance the functions of one power with another by limiting, overseeing, and balancing each other.[31] Faharudin then asserts that the application of the concept of separation of powers and distribution of powers in modern times has combined the concept of separation of powers with the concept of checks and balances, resulting in a hybrid concept called the distribution of power. In this case, power is not explicitly separated but only distributed, thus allowing for overlapping powers.[32] Furthermore, Tohadi and Prastiwi state that checks and balances, in the context of the Unitary State of the Republic of Indonesia, is a power distribution concept where the existing branches of state power are not entirely separated. However, there is a relationship and cooperation between one branch of state power and another.[33] Meanwhile, Cevitra and Sitabuana interpret the checks and balances doctrine in terms of state financial management, where the implementation of the check and balance system should be maximized to avoid and minimize the level of deviation that occurs in state financial management.[34] Specifically, in terms of checks and balances on the sentencing disparity that has troubled justice seekers, as it dramatically disturbs legal certainty and can damage the credibility of the judiciary, some countries attempt to reduce the occurrence of "criminal disparities" by forming institutions such as sentencing commissions or judicial service commissions.[35]

The provisions, ideas, and thoughts on the principle of equality before the law and the doctrine of checks and balances indicate that the consequence of sentencing disparity is taxpayers' distrust of the legal institutions (both tax authorities and judiciary) that there will be apparent injustice that can be compared through existing verdicts, considering the incentive received by violators whose more significant loss of state revenue is better than violators who cause less loss of state revenue..

3. METHODS

The problem formulation in this study indicates that its goal is to master the power of solving legal problems.[36] Thus, it is adequate to use library research (also known as the normative juridical method).

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[31] Ibnu Sina Chandranegara, Incorporation of Checks and Balances into Constitution, *Jurnal Konstitusi*, Vol. 13, No. 3, 2016, p. 560.

[32] Faharudin, Prinsip Checks and Balances Ditinjau dari Sisi dan Praktik, *Jurnal Hukum Volkgeist*, Vol. 1, No. 2, 2017, p. 122.

[33] Tohadi and Dian Eka Prastiwi, Legal Reconstruction in Realizing the Compliance Lawmakers to the Decisions of the Constitutional Court as a Checks and Balances Mechanism, *Jurnal Rechtsvinding*, Vol. 11, No. 1, 2022, p. 19.

[34] Mendy Cevitra and Tundjung Herning Sitabuana, Check and Balance System dalam Hukum Keuangan Negara, Seri Seminar Nasional ke-IV Universitas Tarumanegara, Jakarta, 2022, p. 555.

[35] A. Ahsin Thohari, Desain Konstitusional Komisi Yudisial dalam Sistem Ketatanegaraan Indonesia, available at https://ditjenpp.kemenkumham.go.id/index.php?option=com_content&view=article&id=597:desain-konstitusional-komisi-yudisial-dalam-sistem-ketatanegaraan-indonesia&catid=100&Itemid=180, accessed on October 18, 2022.

[36] Sudikno Mertokusumo, Teori Hukum, Yogyakarta: CV. Mahakarya Pustaka, 2019. 11.

Normative legal research is conducted by studying various literature to obtain secondary data on the researched problem.[37] The existence of this normative legal research will guide this study to search for norms (laws) that are not only found in legislation but also unwritten, which can be in the form of principles or concepts.[38]

Secondary data in this study is obtained by studying literature related to the research object through recording/inventory, classification, and secondary legal materials consisting of primary, secondary, and tertiary legal materials.[39] Primary legal materials are legal materials that have juridical binding force. The legal materials used in this study consist of the Constitution of the Republic of Indonesia Year 1945, the General Tax Law, the Criminal Code, the Criminal Procedure Code, the Law on Judicial Authority, and other applicable regulations. The binding force of legislation in Indonesia is based on Article 7 of Law Number 12 of 2011 concerning the Formation of Legislation as last amended by Law Number 13 of 2022, where the hierarchy of its binding force is from the highest to the lowest: the Constitution of the Republic of Indonesia Year 1945, the Decisions of the People's Consultative Assembly, Laws/Regulations in Lieu of Law, Government Regulations, Presidential Regulations, Provincial-level Regional Regulations, and City/District-level Regional Regulations. Secondary legal materials are legal textbooks, research results in law, and regulations that do not have juridical binding force. Meanwhile, tertiary legal materials complement primary and secondary legal materials, including legal dictionaries, indexes, and bibliographies.

Considering that this legal study conceptualizes law as a norm or prescriptive rule and then utilizes norms or prescriptions as a basis for rejecting the right or wrong of a legal decision and/or a provision, it uses deductive reasoning. The deduction is a way of thinking where specific conclusions are drawn from general statements.[40]

(to be continued)

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[37] Puslitbang Hukum dan Peradilan Mahkamah Agung Republik Indonesia, *Op.cit.*, p. 7.

[38] Sudikno Mertokusumo, *Penemuan Hukum: Suatu Pengantar*, Yogyakarta: CV. Maha Karya Pustaka, 2020, p. 34.

[39] Puslitbang Hukum dan Peradilan Mahkamah Agung Republik Indonesia, *Op.cit.*, p. 7.

[40] Jujun S. Suriasumantri, *Filsafat Ilmu: Sebuah Pengantar Populer*, Jakarta: Pustaka Sinar Harapan, 1995, p. 48.