



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

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Article	Abstract
<p>Keywords: Disparity; Sentence; Tax Crime;</p> <p>History of Article Received: December 02, 2022; Reviewed: December 06, 2022; Accepted: December 16, 2022; Published: December, 2022;</p> <p>DOI:</p>	<p>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.</p>

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

4. ANALYSIS AND DISCUSSION

A. Prevailing Law of the Sentencing Disparity in Indonesian Tax Law

Sentencing based on current modern flow has been accommodated in several general criminal and criminal provisions in Indonesia's taxation field. This is one of the

justifications for the sentencing disparity, as can be seen from the criminal provisions in the Law that regulate the minimum and maximum criminal sanctions, the replacement of fines with imprisonment, and the authority and independence of judges who, among others, decide based on at least 2 (two) pieces of evidence (out of 5 pieces of evidence as referred to in Article 184 paragraph (1) of KUHP) and the judge's belief.

The criminal provisions in the Taxation Law that regulate the minimum and maximum criminal sanctions are the mandate of Article 23A of the 1945 Constitution of the Republic of Indonesia, which is embodied in the following articles:

- 1) Article 38 of UU KUP regulates criminal sanctions in the form of a fine of at least 1 (one) times the amount of tax payable that is not or underpaid and a maximum of 2 (two) times the amount of tax payable that is not or underpaid, or imprisonment for a minimum of 3 (three) months or a maximum of 1 (one) year.
- 2) Article 39 paragraph (1) of UU KUP regulates criminal sanctions in the form of imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of tax payable that is not or underpaid and a maximum of 4 (four) times the amount of tax payable that is not or underpaid.
- 3) Article 39A of UU KUP regulates criminal sanctions in the form of 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, tax collection slip, tax withholding slip, and or tax deposit slip and a maximum of 6 (six) times the amount of tax in the tax invoice, tax collection slip, tax withholding slip, and or tax deposit slip.

It is true that criminal decisions in the field of taxation are based on the offense violated in the tax law. This is based on the principle of legality that must be fulfilled in criminal offenses in the field of taxation and the mandate of Article 23A of the 1945 Constitution of the Republic of Indonesia, which emphasizes that the imposition of taxes that are coercive by the state (either through *besschiking* issued by the tax authority or in the form of a decision decided by the court) cannot be delegated the regulatory authority to government agencies by stipulating laws and regulations that are lower than the law.¹

The replacement of fines with imprisonment can be done if the tracing and confiscation of the convicted person's assets are insufficient to pay the fines. The only criminal provision in the field of taxation that can reduce sentencing disparity in Indonesia is the provision of termination of investigation and termination of criminal prosecution, including criminal offenses in the field of taxation, as regulated in Article 44B of KUP Law. This is emphasized in Article 44B paragraph (2), paragraph (2a), and paragraph (2b) of the KUP Law, which stipulates that the termination of investigation of criminal acts in the field of taxation is only carried out after the taxpayer or suspect has paid off or if the criminal case has been submitted to the court, so that it becomes a consideration for prosecution without the imposition of imprisonment, the defendant pays off the tax:

¹ Jimly Asshiddiqie, *Perihal Undang-Undang*, Depok: PT. RajaGrafindo Persada, 2020, pp. 160-161.

- 1) loss to state revenue as referred to in Article 38 coupled with administrative sanctions in the form of a fine of 1 (one) times the amount of loss to state revenue;
- 2) loss to state revenue as referred to in Article 39 coupled with administrative sanctions in the form of a fine of 3 (three) times the amount of loss to state revenue; or
- 3) The amount of tax in the tax invoice, tax collection slip, tax withholding slip, and or tax deposit slip as referred to in Article 39A, plus an administrative sanction in the form of a fine of 4 (four) times the amount of tax in the tax invoice, tax collection slip, tax withholding slip, and or tax deposit slip.

B. Factors Causing Sentencing Disparity in the Field of Taxation

The Judicial Commission of the Republic of Indonesia concluded that criminal disparity in judges' decisions could be seen based on 3 (three) occurrences, accompanied by several aspects that influence it. First, the occurrence of disparity between fellow District Court decisions or first instance court decisions with its influencing aspects consisting of aspects of procedural law, aspects of material law, aspects of the philosophy of imposing punishment, and aspects of legal reasoning.² Second, the horizontal disparity between fellow decisions of the High Court or Supreme Court or decisions at the appellate level/cassation level, which is viewed from several aspects, namely aspects of procedural law, aspects of material law, aspects of the philosophy of imposing punishment, and aspects of legal reasoning.³ Third, there is a vertical disparity between the decision of the court of first instance and the decision of the court of the next level (High Court or Supreme Court), which is viewed from several aspects, namely aspects of procedural law, aspects of material law, aspects of the philosophy of imposing punishment, and aspects of legal reasoning.⁴

Although the Judicial Commission of the Republic of Indonesia has conducted a juridical study on sentencing disparity, it is necessary to understand some thoughts on the causes of criminal disparity. Harkristuti Harkrisnowo asserted that disparity in sentencing pertains to differences in the imposition of punishment for cases that are similar or equal in seriousness, without apparent reasons or justification with several categories, including disparities between the same criminal offense, disparities between criminal offenses that have the same level of seriousness, disparities in punishment imposed by one panel of judges, and disparities between punishments imposed by different panels of judges for the same criminal offense.⁵ Then, Gulo and Muharram emphasized that although there are factors that cause criminal disparity, in the end, it is the judge who will determine the occurrence of a criminal disparity. The problem of criminal disparity will continue to occur due to the distance between the minimum criminal sanction and the maximum criminal sanction.⁶ The factors that

² Komisi Yudisial Republik Indonesia, *Disparitas Putusan Hakim: "Identifikasi dan Implikasi"*, Jakarta: Sekretaris Jenderal Komisi Yudisial Republik Indonesia, 2014, pp. 67-69.

³ *Ibid.*, pp. 69-70.

⁴ *Ibid.*, pp. 70-72.

⁵ Muhammad Romdoni and Surastini Fitriasih, *Op.cit.*, p. 290.

⁶ Nimerodi Gulo and Ade Kurniawan Muharram, Disparitas dalam Penjatuhan Pidana, *Masalah-Masalah Hukum*, Vol. 47, No. 3, 2018, p. 217.

cause disparity, according to Gulo and Muharram can be viewed from a theoretical juridical perspective and empirical perspective. Regarding juridical theory, the criminal disparity is caused by the existence of freedom and independence owned by judges in the 1945 Constitution of the Republic of Indonesia and the existing Judicial Power Law, ratio decidendi theory, dissenting opinion theory, and the doctrine of *res judicate pro varitate hebetur*. In addition, there is a factor in the Criminal Code because the Criminal Code does not regulate a specific minimum sentence for the defendant. The principle of judicial discretionary power has been fully guaranteed in the Judicial Power Law. In contrast, the principle of *Nulla Poena Sine Lege* in the Criminal Code will cause judges only to be able to decide criminal sanctions based on the type and severity of sanctions following the measure determined by the Law.⁷ From an empirical point of view, considering the defendant's circumstances, including personality, social, economic, and community attitudes, and proving facts at trial can also influence the judge's consideration. The judge himself must not decide in doubt and be principled in *dubio proreo*, so that a criminal disparity arises.⁸ It is realized that there are other obstacles and difficulties encountered by judges in imposing court decisions that cause disparities in sentencing in criminal cases, including the lack of complete material evidence required as evidence in the trial, as well as the evidentiary process that still uses traditional or conventional methods where the method of sentencing is still based on the circumstances of the trial examination alone because the determination of the severity and leniency of the defendant's sentence is still carried out subjectively by the judge.⁹

In addition to the study of the Judicial Commission of the Republic of Indonesia, several other thoughts, the Indonesian Corruption Watch (ICW) study of corruption case decisions found that the factors causing sentencing disparity in Indonesia are the legal system, the law, the judges themselves, and the absence of joint guidance.¹⁰ The legal system in Indonesia that adheres to the civil law system causes sentencing disparity because the emphasis is on the law, unlike countries that adhere to the standard law system, which focuses on jurisprudence as the decision of the Supreme Court or the highest court so that other judges under it must follow it or be considered as a precedent.¹¹

C. Critical Reviews in Disparity of Tax Crime in Indonesia

One of the main tasks of criminal law is to guarantee justice and legal effectiveness while still being based on the formulation of Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.¹² However, the main task of criminal law will be considered ineffective if there is a disparity between aspects of legal certainty and justice, which will put law enforcers in a dilemma when imposing criminal decisions. On the one hand, the principle of legal certainty is closely related to legal positivism, which aims to create an objective or written law made by

⁷ *Ibid.*, p. 225.

⁸ *Loc.cit.*

⁹ *Loc.cit.*

¹⁰ Indonesian Corruption Watch, *Studi atas Disparitas Putusan Pemidanaan Perkara Tindak Pidana Korupsi*, Jakarta: Indonesian Corruption Watch, 2014, pp. 39-42.

¹¹ *Ibid.*, p. 39.

¹² Meldy Ance Almendo, *Prinsip Keadilan dalam Tanggung Jawab Negara Terhadap Korban Tindak Pidana Karena Pelaku Tidak Menjalani Pidanaan*, *Yuridika*, Vol. 31, No. 1, 2016, p. 72.

the state to create an order for its society. On the other hand, it is related to the concept of justice, a just law, according to John Rawls, is a law that accommodates everyone's rights with legal certainty and creates welfare for all people. This means that if norms with legal certainty do not accommodate the rights he should get, it will create injustice.¹³ One form of imbalance between justice and legal certainty that can lead to the criminal disparity is the existence of criminal sanctions, which are a vast gap between the minimum and maximum punishment (imprisonment and or fines). In comparison, the existence of criminal sanction is an absolute thing and the best means to deal with the threat and severe consequences of a crime.¹⁴ Criminal sanctions will become less valuable if the threat and consequences are diminishing and will be ineffective if used to enforce morality compared to behavior that is generally seen as harmful, so it is necessary to achieve demands through reforming the law enforcement process, which will only be helpful if complemented by equal attention to the objectives to be achieved through the means of criminal sanctions.¹⁵ The goals and means must interact with each other, where the means must be subordinate to the goals to be achieved. Criminal sanctions must be the prime guarantor (through their humane and impartial use) and the prime threatener (through their coercive use).¹⁶

Indeed, the problem between justice and legal certainty in terms of disparity in criminal sanctions is born due to several expected and recurring problems, including severe linguistic problems and legal reasoning problems due to the inadequacy of the law.¹⁷ This can be seen in a judge's decision that contains sentencing disparity, which is not accompanied by clear and reasonable justification reasons. According to the Judicial Commission of the Republic of Indonesia, the sentencing disparity in the order of judges' decisions can occur horizontally or vertically with a convergent (towards a meeting point) or divergent (split) pattern,¹⁸ which will be fatal if it is associated with "correction administration". Convicts who, after comparing punishments, then feel they are victims of "the judicial caprice" will become convicts who do not respect the law, even though respect for the law is one of the targets of the purpose of punishment. This will raise a serious problem because it will be an indicator and manifestation of the failure of a system to achieve equal justice in the rule of law and, at the same time, weaken public confidence in the system of criminal law administration.¹⁹

The existence of justice and legal certainty issues in sentencing disparity is one manifestation of neglecting the principle of equality before the law and the doctrine of checks and balances. The neglect of the principle of equality before the law in sentencing disparity in taxation is seen in every decision that has broad consequences, both for direct perpetrators of criminal acts and for the wider community,²⁰ and the state. The consequence of sentencing disparity for perpetrators of criminal acts in the field of taxation is the emergence of rationalization for perpetrators who commit tax

¹³ Pricillia Putri Ervian Sitompul, *Op.cit.*, p. 21,

¹⁴ Tubagus Heru Dharma Wijaya, *Membangun Tujuan Pidanaan di Indonesia: Dasar Filosofis Dan Konsep Tujuan Pidanaan*, dalam Aby Maulana (Ed.), *Hukum dan Perkembangan Masyarakat*, Jakarta: P3IH FH UMJ, 2019, p. 312.

¹⁵ *Loc.cit.*

¹⁶ *Ibid.*, p. 313.

¹⁷ Al. Andang L. Binawan, *Empat Problematik Filosofis Hukum dalam Dinamika Hubungan Keadilan dan Kepastian*, *Masalah-Masalah Hukum*, Vol. 51, No. 3, 2022, p. 321.

¹⁸ Komisi Yudisial Republik Indonesia, *Op.cit.*, p. 40

¹⁹ Puslitbang Hukum dan Peradilan Mahkamah Agung Republik Indonesia, *Op.cit.*, p. 21.

²⁰ Muladi dan Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana*, Bandung: PT. Alumni, 2010, p. 52

crimes in connection with the "justification of tax evasion incentives", namely the more significant benefit or incentive received by the perpetrator if the greater the loss to state revenue caused. This can be seen from the following examples of decision studies:

- 1) Decision Number 133/Pid.B/2020/PN SDA (which was upheld by Cassation Decision Number 1791 K/Pid.Sus/ 2021) imposed imprisonment for 2 (two) years and a fine of 2 (two) times the loss in state revenue for the loss in state revenue of IDR227.83 million, while several other decisions, such as Decision Number 1824 K/Pid.Sus/2018 imposed imprisonment for 3 (three) years and 6 (six) months and a fine of 2 x the loss in state revenue for the loss in state revenue of IDR10.51 billion.
- 2) Bandung High Court Decision 38/PID.SUS/2020/PT.BDG imposed a prison sentence of 4 (four) years and a fine of 2 x the loss in state revenue for the loss in state revenue of Rp. 53.49 billion, while Decision Number 689 K/Pid.Sus/2018 imposed a prison sentence of 3 (three) years 6 (six) and a fine of 3 x the loss in state revenue for the loss in state revenue of Rp. 103.85 billion.
- 3) Decision Number 2486 K/Pid.Sus/2018 with a fine of 2 x Rp4.32 billion (Rp8.64 billion), which decided that if the convicted person did not have sufficient property to pay the fine, he would be imprisoned for 6 (six) months, while Decision Number 689 K/Pid.Sus/2018, with a fine of 3 x Rp103.85 billion (Rp311.55 billion), decided that if the fine were not paid, it would be replaced with imprisonment for 6 (six) months.

Of course, cases of sentencing disparity without proper and correct legal arguments have ignored the mandate of the 1945 Constitution of the Republic of Indonesia and the Criminal Procedure Code, which have emphasized that every citizen is equal before the law and is entitled to recognition, guarantees, protection, and fair legal certainty, including courts that do not only decide based on the proper fulfillment of at least 2 (two) pieces of evidence as referred to in Article 184 of the Criminal Procedure Code and the judge's belief but must also adjudicate fairly and based on the severity or lightness of the impact caused by the perpetrator as a manifestation of fair and specific criminal responsibility.

Meanwhile, ignoring the doctrine of checks and balances will ignore the principle of mutual correction and mutual control of the operation of each branch of power in a country,²¹ which will ultimately only lead to the tyrannical rule of each branch of power.²² Indeed, there have been efforts from the state to reduce sentencing disparity in Indonesia, among others, by establishing the Judicial Commission and Supreme Court Regulations to handle certain criminal offenses. However, this has not prevented sentencing disparity in taxation, which fulfills the principle of systematic *lex specialist*, so the provisions used are criminal tax provisions during the court process, as the requirement for a particular criminal law to meet the criteria as a systematic *lex specialis*, according to Hiariej, its unique address (namely taxpayers and tax officials) and its material and formal provisions that deviate from the Criminal Code and

²¹ Sulardi, Mewujudkan Checks and Balances Dalam Penyusunan Undang-Undang, *Masalah-Masalah Hukum*, Vol. 42, No. 2, 2013, pp. 283-284.

²² *Ibid.*, p. 287.

Criminal Procedure Code.²³ Some critical notes related to the lack of efforts to reduce sentencing disparity in the field of taxation in Indonesia are:

- 1) Although Article 42 of the Judicial Power Law confirms that in order to maintain and uphold the honor, dignity, and behavior of judges, the Judicial Commission can analyze court decisions that have obtained permanent legal force as a basis for recommendations to transfer judges, this is contrary to the Constitutional Court Decision Number 005/PUU-IV/2006 which states that the authority of the Judicial Commission only proposes the appointment of Supreme Court Judges to the House of Representatives (DPR). So the examination carried out by the Judicial Commission on judges' decisions that have permanent legal force has gone beyond the definition of ethical supervision.²⁴
- 2) Until recently, there has been no effort by the Supreme Court to overcome the problem of sentencing disparity in the field of taxation, even though the Supreme Court has overcome the problem of sentencing disparity in corruption cases as referred to in Supreme Court Regulation (PERMA) Number 1 of 2020 concerning Sentencing Guidelines for Article 2 and Article 3 of the Corruption Eradication Law (Tipikor). Article 3 of PERMA Number 1 of 2020, among others, emphasizes that the PERMA sentencing guidelines aim to prevent differences in sentencing ranges (which have similar characteristics without sufficient consideration without reducing the authority and independence of Judges), require consideration of reasons in determining the severity of punishment, and realize legal certainty proportional justice and benefit, in punishing corruption cases in Indonesia.

D. Thoughts on Reducing Sentencing Disparity in Taxation

The problem of sentencing disparity is one of the subsystem problems in the criminal law implementation system. So, the sentencing disparity is also part of the problem of punishment and can be said to originate from favorable law/legislation (among others, because the statutory guidelines for sentencing have not been regulated), which at least follows the flow of criminal law (classical flow or current flow), and originates from Judges (among others, because of the existence of diverse ideological understandings of the philosophy of punishment) who have extensive freedom to choose the type of punishment desired, in connection with the use of alternative systems in criminal punishment in the Law.²⁵

Sentencing disparity stemming from positive law can occur horizontally or vertically. Horizontal disparity refers to the same hierarchy of legislation, for example, between a law and another law or between a Government Regulation and another Government Regulation. Meanwhile, the vertical disparity can occur between law and other laws and regulations whose hierarchy can be above or below, for example, between a law and a Government Regulation. One example is Article 44B of the KUP Law and Prosecutor's Regulation (PERJA) No. 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. Article 44B paragraph (1) and paragraph

²³ Edward Omar Sharif Hiariej, Principle of Lex Specialist Systematic and Tax Criminal Law, Jurnal Penelitian Hukum De Jure, Vol. 21, No. 1, 2021, p. 10.

²⁴ A. Ahsin Thohari, *Loc.cit.*

²⁵ Puslitbang Hukum dan Peradilan Mahkamah Agung Republik Indonesia, *Op.cit.*, p. 22.

(2) of the KUP Law stipulates that in the interest of state revenue, the Minister of Finance may request the termination of investigation of criminal acts in the field of taxation to the Attorney General, as long as the taxpayer or suspect has paid off the loss to state revenue along with administrative sanctions in the form of fines. Meanwhile, PERJA No. 15 of 2020, among others, regulates that the suspect is committing a criminal offense for the first time, and the criminal offense is only punishable by a fine or imprisonment of not more than 5 (five) years. Of course, PERJA No. 15 of 2020 cannot be applied to Article 39A of the KUP Law, which carries a prison sentence of 6 (six) years, whereas Article 44B paragraph (2) letter c stipulates that the termination of criminal investigations in the field of taxation can only be carried out after the taxpayer or suspect has paid off the amount of tax in the tax invoice, tax collection slip, tax withholding slip, and or tax deposit slip as referred to in Article 39A plus an administrative sanction in the form of a fine of 4 (four) times the amount of tax in the tax invoice, tax collection slip, tax withholding slip, and or tax deposit slip.

Sentencing disparity originating from judges can occur horizontally or vertically, with the aspects that influence it consisting of aspects of procedural law, aspects of material law, aspects of the philosophy of imposing punishment, and aspects of legal reasoning. Horizontal disparity refers to the decisions of fellow District Courts or courts of first instance, or decisions of fellow High Courts or appellate levels, or decisions of fellow Supreme Courts or cassation or review levels.²⁶ Then, vertical disparity can occur between the decision of the court of first instance and the decision of the court of the next level, either the High Court or the Supreme Court.

It is necessary to strengthen the principle of equality before the law and the principle of checks and balances in reducing sentencing disparity in the field of taxation in Indonesia, considering the control of behavioral perceptions directly to the compliance behavior of taxpayers is in order to increase tax transparency.²⁷ Strengthening the principle of equality before the law can be done by reforming the provisions, among others:

- 1) The Supreme Court regulates the establishment of guidelines for criminal sanctions in taxation.

Based on a comparison of Supreme Court Regulation No. 1 of 2020 and the Taxation Law, its substance should cover matters such as the application of criminal sanctions to defendants who are legal entities (corporate taxpayers) and individuals (natural persons), the narrative description of verdicts related to facts and considerations that at least include the categorization of financial losses to state revenue, the categorization of the level of culpability, impact, and benefits (e.g., categories of very high, high, moderate, low, and very low), the range of criminal penalties, aggravating and mitigating circumstances in the imposition of criminal sanctions, exceptions (e.g., judges may not impose fines in cases where the loss to state revenue is below Rp. 500 million), the imposition of minimum criminal limits in cases of concursus (including continuous offenses, real concursus, and ideal concursus), guidelines for additional criminal penalties, guidelines for the substitution of fines and imprisonment adjusted to the categorization of fines and financial losses to state revenue with minimum imprisonment (considering that Article 44C

²⁶ Komisi Yudisial Republik Indonesia, *Op.cit.*, pp. 67-69.

²⁷ Anis W. Hermawan, Voluntary Disclosure Program in Taxation and Its Certificates: A Philosophical Perspective, *Journal of Tax Law and Policy*, Vol. 1, No. 2, 2022.

paragraph (3) of the Taxation Law only regulates the imposition of imprisonment not exceeding the imposed imprisonment, resulting in an average substitution of fines with imprisonment ranging from 3 to 6 months), and other provisions related to the imposition of criminal sanctions in the field of taxation.

2) The awareness to adopt the existence of jurisprudence

The awareness to adopt the existence of jurisprudence. Although the nature of jurisprudence in the legal sources in Indonesia is "Persuasive Precedent" for similar or comparable cases, the essence of jurisprudence should serve as a *judex factie* for lower-level judges.²⁸ Therefore, essential jurisprudence creates legal standards, a uniform legal basis, and legal certainty²⁹ in preventing sentencing disparity in taxation.

3) Examination or dissemination of criminal case verdicts in the field of taxation related to sentencing disparity without clear justification.

Examination or dissemination of criminal case verdicts in the field of taxation related to sentencing disparity without clear justification. Examining judicial products or legal annotations involves providing legal notes on court decisions and prosecutor's indictments that generally meet two criteria: being highly controversial and/or have significant social impact. Furthermore, according to the Indonesian Online Dictionary, dissemination refers to spreading ideas, concepts, and so on.³⁰ Although public examination results cannot change decisions already established by the panel of judges, such results can serve as educational material for future jurists, particularly judges, to improve their performance.³¹ Additionally, recommendations arising from examining and disseminating these verdicts can be followed up by the Supreme Court to provide clear understanding and guidance for judges presiding over criminal cases in the field of taxation, thereby ensuring consistency in court rulings and legal considerations for similar cases.³²

The strengthening of the principle of checks and balances is carried out by synergizing one of the public prosecutor's authorities related to the judge's authority in determining the severity of punishment, making it auditable with Supreme Court regulations and under the supervision of the Judicial Commission. One of these is the requirement for the public prosecutor to ensure that the indictment contains a precise, clear, and complete description as intended in Article 143 paragraph (2) of the Criminal Procedure Code (KUHAP) so that the judge can impose criminal sanctions reasonably, and to ensure that the Supreme Court and the Judicial Commission carry out their tasks and authorities in an accountable manner to the public, without being considered as conflicting with the idea of judicial power independence, as court decisions should fundamentally not be assessed by other institutions except through

²⁸ Puslitbang Hukum dan Peradilan Mahkamah Agung Republik Indonesia, *Op.cit.*, p. 3.

²⁹ *Ibid.*, p. 2.

³⁰ Kementerian Pendidikan, Kebudayaan, Riset, dan Teknologi Republik Indonesia, "diseminasi", available at <https://kbbi.kemdikbud.go.id/entri/diseminasi>, accessed on October 3, 2022.

³¹ Unair News, *Loc.cit.*

³² Aradila Caesar Ifmaini Idris, Eksaminasi Terhadap Putusan Pengadilan Tindak Pidana Korupsi pada Pengadilan Negeri Jakarta Pusat atas Nama Terdakwa Amir Fauzi (Putusan Nomor: 127/Pid.Sus/Tpk/2015/Pn.jkt.pst), *Integritas*, Vol. 3, No. 1, 2017, p. 211.

legal remedies³³. This includes the precise, clear, and complete description of the indictment, which must include the violated criminal provisions to prevent any loopholes for the defendant or their legal counsel to raise objections (exceptions) that may potentially render the indictment void or create opportunities for mitigating the defendant's criminal sanctions. Thus, the independence of judicial power, which does not negate public accountability, represents checks and balances between the Supreme Court and the Judicial Commission within an integrated criminal justice system. Therefore, examining judgments made by judges is solely aimed at assessing sentencing disparity based on sentencing guidelines, such as those regulated by the Supreme Court for criminal offenses in the field of taxation, to provide certainty and support the future careers of judges, including in terms of proposing the appointment of Supreme Court judges.³⁴ Additionally, the Supreme Court and the Judicial Commission: a) must jointly oversee judges in delivering verdicts by considering the results of public examination and dissemination of criminal case verdicts in the field of taxation in order to determine whether there is Misconduct of Judges (with intentional elements) or Legal Error (where judges unintentionally make incorrect decisions) in a judgment,³⁵ and/or b) routinely conduct or facilitate public examination and dissemination activities related to sentencing disparity without clear justification in criminal cases in the field of taxation. The public examination and dissemination results can be used to consider a reward and punishment system for judges.

5. CONCLUSION

This study constructs two conclusions. First, currently, only Article 44B of the Taxation Law can reduce sentencing disparity in the field of taxation in Indonesia. However, there are still legal loopholes in the criminal taxation field that can lead to frequent sentencing disparity in Indonesia, primarily due to the legal system, laws themselves, judges, and the lack of joint guidelines. It includes the provision of Article 44C paragraph (3) of the Taxation Law, which does not regulate the categorization of fines and financial losses to state revenue with minimum imprisonment, minimum and maximum criminal sanctions in the field of taxation without specific parameters (such as categorizing the amount of loss to state revenue and its impact on taxpayers' compliance in Indonesia), and the judges' independence in issuing verdicts based on at least two pieces of evidence and their conviction. Second, the ideal legal concept to reduce sentencing disparity in the field of taxation in Indonesia is by strengthening the principles of equality before the law and the doctrine of checks and balances regarding three forms of disparity commonly observed in Indonesia, including cross-integrated criminal justice system disparity (investigation, prosecution, and adjudication), horizontal judicial disparity (between judgments at the trial level, appellate level, and cassation level), and vertical judicial disparity (between a court decision and related decisions made by higher or lower courts). Strengthening the principles of equality before the law and the doctrine of checks and balances can be achieved through the establishment of Supreme Court Regulations on Guidelines for Criminal Sentencing in Tax Crimes and Attorney General Regulations on Guidelines for Prosecution and Pre-

³³ A. Ahsin Thohari, *Loc.cit.*

³⁴ *Loc.cit.*

³⁵ Aradila Caesar Ifmaini Idris, *Ibid.*

Prosecution in Tax Crimes, as well as strengthening the supervisory institutions for each integrated criminal justice system through public examination or dissemination of any verdict that results in sentencing disparity without clear justification.

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