

## CRIMINAL TAX LIABILITY OF CORPORATE TAXPAYER IN INDONESIA

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Article	Abstract
<p><b>Keywords:</b> Corporate Taxpayer; Criminal Liability; Tax</p> <p><b>History of Article</b> Received: December 30, 2022; Reviewed: January 05, 2023; Accepted: February 12 2023; Published: March 30, 2023.</p> <p><b>DOI:</b></p>	<p>The crucial role of corporate taxpayers in tax revenues in Indonesia has not been supported by the establishment of a law and law enforcement against corporate taxpayers' criminal liability reasonably and beneficially for the public. Based on the existing juridical and empirical gaps, it is necessary to carry out doctrinal or normative juridical studies in answering the existing problem formulations. This study draws two conclusions based on primary, secondary, and tertiary legal materials. First, there is a legal vacuum governing the criminal liability of corporate taxpayers in the <i>KUP</i> Law, given that there is a mandate in Article 23A of the 1945 Constitution of the Republic of Indonesia and the principle of legality formulated in Article 1 paragraph (1) of the Criminal Code. Second, ideally, law enforcement on corporate taxpayer liability should be carried out through regulation of corporate criminal liability or corporate taxpayers in the renewal of the <i>KUP</i> Law and/or since the enactment of Law no. 1 of 2023 (<i>UU KUHP</i>) in the coming 2025. However, in the context of uniform handling of tax criminal cases by the integrated criminal justice system in Indonesia against Corporations or Corporate Taxpayers, law enforcement in the field of taxation against corporate/corporate taxpayers must continue to be carried out for the sake of a sense of justice and public benefit. Thus, the legal vacuum can be minimized through the Attorney General's and Supreme Court Regulations, which regulate guidelines for handling criminal cases in the field of taxation carried out by Corporate Taxpayers.</p>

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### 1. INTRODUCTION

The crucial role of corporate taxpayers (*WP*) in tax revenues in Indonesia has not been able to run optimally due to the prevalence of tax avoidance and tax evasion by abusing certain legal entities.<sup>1</sup> The abuse of certain corporate taxpayers cannot be

<sup>1</sup> Henry Dianto P. Sinaga, The Criminal Liability of Corporate Taxpayer in the Perspective of Tax Law Reform in Indonesia, *Mimbar Hukum*, Vol. 29, No. 3, 2017, p. 544.

separated from juridical and empirical gaps in the formation and implementation of tax accountability in Indonesia.

The juridical gap of corporate taxpayer tax liability in Indonesia can be summarized based on the following 3 (three) provisions. **First**, Article 32 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*) stipulates that the representative of the Taxpayer, namely the management in the case of a Corporate Taxpayer, is personally and/or jointly responsible for the payment of the tax owed. Joint responsibility can be excluded if the representative of the Taxpayer can prove and convince that in his position, according to fairness and decency, it is impossible to be held responsible.<sup>2</sup> This exception indicates that the responsibility for paying taxes can be transferred to other parties, such as commissioners and the majority or controlling shareholders and or people who are authorized to determine policies and or make decisions within the company and or are authorized to sign contracts/agreement and/or sign checks/giro.<sup>3</sup> The existence of Article 32 of the *KUP* Law, which is strengthened by the definition of WP in the context of the *KUP* Law and the Income Tax Law, and the definition of Tax Underwriters in the context of the *PPSP* Law shows that alternative liability in tax regulations in Indonesia is still implicitly regulated.<sup>4</sup> **Second**, Article 23A of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) has mandated that taxes must be based on the law so that liability for tax sanctions must fulfill legal certainty through strict arrangements in the tax laws and regulations that apply in Indonesia.<sup>5</sup> However, accountability for administrative and criminal sanctions does not yet have legal certainty in the *KUP* Law, considering that currently, several cases show that for one act, some are subject to administrative sanctions, and some are subject to criminal sanctions. **Third**, Article 1 paragraph (1) of the Criminal Code (*KUHP*) inherited from the Netherlands, which is still valid in Indonesia in connection with the Draft Criminal Code (*RUU*), which has been passed by the People's Representative Council (*DPR*) of the Republic of Indonesia (RI) on December 6, 2022, will come into force after 3 (three) years from the date of promulgation (namely in 2025),<sup>6</sup> requiring the principle of legality in criminal law. The existence of this principle, according to Moeljatno, emphasizes that every crime must contain the following 3 (three) meanings: (1) no action is prohibited and punishable by crime if it has not been previously stated in a statute, (2) for determining the existence of a criminal act may not

<sup>2</sup> Henry D. P. Sinaga, *Pertanggungjawaban Pengganti dalam Hukum Pajak di Indonesia*, Masalah-Masalah Hukum, Vol. 45, No. 2, 2017, p. 210.

<sup>3</sup> *Loc.cit.*

<sup>4</sup> *Loc.cit.*

<sup>5</sup> Henry D. P. Sinaga and Benny R. P. Sinaga, *Rekonstruksi Model-Model Pertanggungjawaban di Bidang Perpajakan dan Kepabeanan*, Yogyakarta: PT. Kanisius, 2018.

<sup>6</sup> CNBC Indonesia, available at [https://www.google.com/search?q=kuhp+disahkan+mulai+berlaku&client=safari&channel=mac\\_bm&ei=8LzIY5nxLuPVz7sPr\\_20iAU&ved=0ahUKEwiZqY0o3NL8AhXj6nMBHa8-DVEQ4dUDCA4&uact=5&oq=kuhp+disahkan+mulai+berlaku&gs\\_lcp=Cgxnd3Mtd2l6LXNlcnAQAzIFCCEQoAEyBQghEKABMgUIIRCGATIICCEQFhAeEB06BQgAEIAEOgcIIRCGARAKSgQIQRgBSgQIRhgAUOsFWOgfYI0iaAFwAHgAgAG2AogBpRCSAQgwLjEyLjEuMZgBAKABAcABAQ&sclient=gws-wiz-serp](https://www.google.com/search?q=kuhp+disahkan+mulai+berlaku&client=safari&channel=mac_bm&ei=8LzIY5nxLuPVz7sPr_20iAU&ved=0ahUKEwiZqY0o3NL8AhXj6nMBHa8-DVEQ4dUDCA4&uact=5&oq=kuhp+disahkan+mulai+berlaku&gs_lcp=Cgxnd3Mtd2l6LXNlcnAQAzIFCCEQoAEyBQghEKABMgUIIRCGATIICCEQFhAeEB06BQgAEIAEOgcIIRCGARAKSgQIQRgBSgQIRhgAUOsFWOgfYI0iaAFwAHgAgAG2AogBpRCSAQgwLjEyLjEuMZgBAKABAcABAQ&sclient=gws-wiz-serp), accessed on December 29, 2022.

be used by analogy, and (3) the rules of criminal law are not retroactive.<sup>7</sup> The existence of this legality principle indicates that criminal liability carried out by Corporate Taxpayers still raises pros and cons in connection with the criminal provisions in the *KUP* Law that have not regulated corporate or Corporate Taxpayer liability, even though there has been a Supreme Court Regulation (*PERMA*) Number 13 of 2016 concerning Handling Cases of Criminal Acts by Corporations and Supreme Court Circular Letter (*SEMA*) Number 4 of 2021 concerning the Application of Several Provisions in the Handling of Crimes in the Field of Taxation stipulate that everyone in criminal provisions, including in the *KUP* Law, is defined as an individual and a corporation.

The empirical gap can be concluded in the following 2 (two) things, which come from several studies or thoughts. First, the existence of a tax subject structure that includes domestic tax subjects and foreign tax subjects in Indonesia has the potential to cause problems in corporate taxpayer tax liability,<sup>8</sup> such as certain holding companies that form several other companies in order to hide their assets through subsidiaries and reduce tax payments through affiliated companies in tax havens countries. Obstacles that arise mainly relate to the whereabouts of the owners and/or management of the company when handling criminal acts in the field of taxation, even though in the judicial system in force in Indonesia, the presence of the accused or witnesses before the trial is necessary because it involves human rights (*HAM*) in the form of fulfillment the right of the accused to prove their innocence.<sup>9</sup> Second, the disparity of law enforcement in the field of taxation for the same type of violation. For example, violations in issuing and/or crediting tax invoices not based on actual transactions can be subject to criminal tax liability and administrative responsibility. One is the Decision of the Supreme Court (*MA*) Number 2583 K/PID.SUS/2016 imposes a prison sentence and criminal fines on the director for deliberately using tax invoices that are not based on actual transactions. While the Supreme Court Review Decision (*PK*) No. 647/B/PK/PJK/2012 and No. 649/B/PK/PJK/2012 and *PK MA* Decision No. 637 B/PK/PJK/2010 and No. 09/B//PK/PJK/2011 decided that the Taxpayer was administratively guilty of correction of Input *VAT* originating from an unauthorized tax invoice.

The crucial role of corporate taxpayers in Indonesia, but there are still juridical and empirical gaps in its implementation, indicates the need to conduct a normative juridical study to answer 2 (two) existing problem formulations. First, what are the applicable laws governing the tax liability of corporate taxpayers in Indonesia? Second, what is the ideal arrangement for corporate taxpayer liability in Indonesia in the future?

## 2. THEORETICAL FRAMEWORK AND LITERATURE REVIEW

The tax liability of corporate taxpayers cannot be separated from the development of tort laws or laws that regulate illegal acts. Tort Law significantly contributes to regulating the behavior of legal subjects so that each legal subject should

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<sup>7</sup> Moeljatno, *Asas-Asas Hukum Pidana*, Jakarta: Rineka Cipta, 2008, pp. 27-28.

<sup>8</sup> Henry Dianto P. Sinaga, *Op.cit.*, p. 544.

<sup>9</sup> Henry Dianto P. Sinaga, *Loc.cit.*

act according to proper and reciprocal prudential standards, as well as the obligation to recover for losses in the event of an unlawful act that causes harm to another person.<sup>10</sup>

Based on this understanding of tort law, the tax liability is expected to have a philosophical foundation and theoretical basis for implementing liability not only limited to errors but extends to liability without fault, which has given rise to several models of liability, such as strict liability, vicarious liability, and secondary liability. The application of strict liability in corporations lies in the criteria related to community welfare activities, risk assessment which is very dependent on information within the corporation, and the effectiveness of its regulation as *mala prohibita* so that there is no need to prove *mens rea* because it can hinder the purpose of the legislation concerned.<sup>11</sup> The implementation of vicarious liability in corporations lies in the appropriate criteria for pursuing unlawful acts committed by actual beneficiaries within the corporation, thus providing fairness to independent agents/contractors who are deemed to have made a mistake but can prove that they did not receive any additional benefits for the occurrence of the crime.<sup>12</sup> Meanwhile, the implementation of secondary liability in corporations lies in the appropriate criteria for punishing corporations as secondary parties or intermediary parties who have the right and ability to supervise the activities of other parties so as not to violate particular financial interests, who consciously or voluntarily or negligently ignore the formulation containing criminal acts and state/regional losses<sup>13,14</sup>

The philosophical foundation referred to refers to the existence of an increasingly expanded accountability which is a manifestation of the unification of three legal values at once, in the form of legal certainty, public benefit, and justice, which takes into account the morality and economics of the law itself in reinforcing the imposition of sanctions in the field of taxation to provide sound output and outcome at the same time. This is in line with Mertokusumo's thinking, which emphasizes that in upholding the law, there are elements of legal certainty, benefit, and justice that must always be considered.<sup>15</sup> Legal certainty is justifiable protection against arbitrary actions, which means how the law must apply, and basically, it is not allowed to deviate.<sup>16</sup> Then, the law is for humans; the implementation or enforcement of the law must provide benefits or uses for society.<sup>17</sup> Furthermore, the implementation or enforcement of the law must be fair, bearing in mind that the community is very interested in implementing or enforcing a just law.<sup>18</sup>

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<sup>10</sup> Henry D. P. Sinaga and Benny R. P. Sinaga, *Ibid.*

<sup>11</sup> *Ibid.*, p. 290-291.

<sup>12</sup> *Ibid.* P. 331.

<sup>13</sup> *Ibid.* P. 365.

<sup>14</sup> Henry D. P. Sinaga, Aditya Wirawan, and Rintis N. Pramugar, Reconstruction of Corporate Criminal Liability in Indonesia, *International Journal of Advanced Science and Technology*, Vol. 29, No. 8, 2020, p. 1237

<sup>15</sup> Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, Yogyakarta: CV. Maha Karya Pustaka, 2022, p. 223.

<sup>16</sup> *Loc.cit.*

<sup>17</sup> *Ibid.*, p. 224.

<sup>18</sup> Sudikno Mertokusumo and A. Pitlo, *Bab-Bab Tentang Penemuan Hukum*, Bandung: Penerbit PT. Citra Aditya Bakti, 2020, p. 2.

The theoretical basis refers to the arguments supporting the legal liability theory in answering the problem formulation, which is the study's research focus.<sup>19</sup> The basic concept of legal liability theory in taxes is based on the attachment of propriety to act or act and propriety not to act or not act towards taxpayers in fulfilling their tax rights and obligations and towards Fiscus (employees of the Directorate General of Taxes) in providing tax services and at the same time supervision/enforcement law in the field of taxation. As for the obligation due to propriety to do or act must meet the following four criteria. First, it is done in good faith to fulfill its legal obligations unless it can be proven by force majeure, coercion, or other things that make it act otherwise. Second, it is done because of danger, damage, or loss that may occur immediately and/or cannot be avoided. Third, it is done because there is no better alternative; if the action is not taken, it will cause even more significant harm, damage, or loss. Fourth, it is an act or deed that is purely accidental.<sup>20</sup> While the obligation due to propriety not to act or not to act must meet four criteria, namely an act mala prohibita, not within the scope of his capacity so that he cannot act/act according to his professional judgment, there are still several alternative actions/other actions which are even better does not violate the applicable laws and regulations, and is an act/action that enriches oneself/a group and/or other parties that causes losses to state finances.<sup>21</sup>

### 3. METHODS

In addressing the two problem formulations, this study uses doctrinal research with descriptive-analytical and prescriptive-analytical methods. Descriptive studies are intended to provide as accurate data as possible about humans, conditions, or other phenomena. Meanwhile, prescriptive studies are intended to obtain suggestions for overcoming existing problems.<sup>22</sup>

This doctrinal study uses 3 (three) legal materials: primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal materials in this study are legal materials or documents that are legally binding, such as the 1945 Constitution of the Republic of Indonesia and laws and regulations that are applicable and relevant in responding to the formulation of the existing problems. Secondary legal materials in this study include books, bills, research results, and relevant scientific articles. While tertiary legal materials in this study are materials from the internet or websites, bibliographies, and legal dictionaries.<sup>23</sup>

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<sup>19</sup> Dumaria Simanjuntak, *Rancang Bangun Hukum Pengawasan Desa di Indonesia*, Jakarta: PT Scientia Integritas Utama, 2022, p. 12.

<sup>20</sup> Henry D. P. Sinaga and Benny R. P. Sinaga, *Op.cit.*, pp. 103-104.

<sup>21</sup> *Loc.cit.*

<sup>22</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta : Penerbit Universitas Indonesia, 2010), pp. 9-11.

<sup>23</sup> Suteki dan Galang Taufani, *Metodologi Penelitian Hukum*, Depok: PT RajaGrafindo Persada, 2020, p. 266.

## 4. ANALYSIS AND DISCUSSION

### A. Prevailing Law of Corporate Taxpayer Liability in Indonesia

The tax liability of corporate taxpayers in Indonesia still applies to administrative sanctions. This is based on the formulation of Article 12 paragraph (3) and Article 13 paragraph (1) of the *KUP* Law, which stipulates that the Direktorat General of Taxes determines the amount of tax owed by issuing Underpaid Tax Assessment Letters (*SKPKB*) within a period of 5 (five) ) year after the time the tax becomes payable or the end of the Tax Period, Part of the Tax Year, or Tax Year, if the evidence is found that the amount of tax payable according to the Tax Return reported by the Taxpayer is incorrect. As for what is meant by taxpayers are individuals or entities, including taxpayers, tax cutters, and tax collectors, who have tax rights and obligations following the provisions of the tax laws and regulations as referred to in Article 1 point 2 of the *KUP* Law. The formulation of Article 12 paragraph (3) and Article 13 paragraph (1) of the *KUP* Law shows that tax liability is attached to taxpayers, both individual taxpayers and corporate taxpayers, so that until the stage of a tax audit or the stage of application of administrative sanctions, accountability can be attached to the Corporate Taxpayer.

In addition to tax audits, there is law enforcement in other areas of taxation, which can be in the form of preliminary evidence examinations or criminal investigations in the field of taxation. Article 43A paragraph (1) of the *KUP* Law confirms that the Director General of Taxes, based on information, data, reports, and complaints, has the authority to conduct preliminary evidence checks before investigating criminal acts in the field of taxation. What is meant by Preliminary Evidence Examination is an examination conducted to obtain preliminary evidence regarding the allegation that a crime has occurred in the field of taxation, as referred to in Article 1 number 27 of the *KUP* Law. Furthermore, Article 2 paragraph (1) of the Regulation of the Minister of Finance Number 177/PMK.03/2022 concerning Procedures for Examination of Initial Evidence of Crimes in the Field of Taxation stipulates that the Direktorat General of Taxes has the authority to conduct Preliminary Evidence Examination of individuals or entities suspected of committing a Crime in the Field of Taxation. This confirms that the tax liability is an individual or entity if an initial evidence examination is carried out.

Then, the Preliminary Evidence Examination is followed up with an investigation if evidence of initial criminal acts in the field of taxation is found. The Taxpayer does not reveal the unrighteousness of his actions as stipulated in Article 8 paragraph (3) of the *KUP* Law or discloses the unrighteousness of his actions as stipulated in Article 8 paragraph (3) of the *KUP* Law but not following the actual situation, as stipulated in Article 59 paragraph (8) letter a Government Regulation Number 50 of 2022 concerning Procedures for the Implementation of Rights and Fulfillment of Tax Obligations. As for tax liability, if criminal investigations in the field of taxation are carried out, it is "everyone" as has been formulated in criminal offenses in the *KUP* Law, such as Article 38, Article 39 paragraph (1), and Article 39A of the *KUP* Law. In the General Provisions of the *KUP* Law and Government Regulation Number 50 of 2022, there is no definition or understanding of "everyone" in criminal offenses in the field of taxation. This is unlike several other laws

(UU), which are administrative penal laws that regulate legal entities as legal subjects as formulated in Article 1 number (10) of Law no. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, Article 1 point (1) of Law no. 20 of 2001 concerning the Eradication of Corruption Crimes, and Article 1 number (32) of Law no. 32 of 2009 concerning Environmental Protection and Management.

### **B. Corporate Responsibility in the Criminal Code**

Corporate criminal responsibility in Indonesia has been regulated in the criminal lex generalist in Indonesia since the enactment of Law Number 1 of 2023 concerning the Criminal Code (*UU KUHP*). Article 145 of the Criminal Code stipulates that what is meant by Everyone is an individual, including Corporations. A corporation is an organized group of people and/or assets, whether they are legal entities in the form of limited liability companies, foundations, associations, cooperatives, state-owned enterprises, regionally-owned enterprises, village-owned enterprises, or the equivalent, as well as associations not incorporated as a legal entity or business entity in the form of a firm, limited partnership, or the equivalent, as referred to in Article 146 of the Criminal Code Law.

Then, Article 45 of the Criminal Code Law stipulates that corporations, which include legal entities in the form of limited liability companies, foundations, cooperatives, state-owned enterprises, regionally-owned enterprises, or the equivalent, as well as associations either legally incorporated or not incorporated, or a business entity in the form of a firm, limited partnership, or equivalent following the provisions of laws and regulations, is the subject of a criminal act. What is meant by corporate crime is a crime committed by a board member who has an available position in the organizational structure of the corporation or a person based on a working relationship or based on another relationship acting for and on behalf of the corporation or acting in the interests of the corporation, within the scope of the corporation's business or activities both individually and jointly, or giving orders, controlling holders, or beneficial owners of Corporations who are outside the organizational structure, but can control the corporation, as referred to in Article 46 and Article 47 of the Criminal Code Law. Furthermore, Article 50 of the Criminal Code Law stipulates that justifications that can be submitted by administrators who have an available position, give orders, control holders, or beneficial corporate owners can also be submitted by Corporations as long as these reasons are directly related to the Crime being charged against the corporation.

Corporate crime, as referred to in Article 46 and Article 47, can be accounted for if it is included in the scope of business or activity specified in the articles of association or other provisions applicable to the corporation. It benefits the corporation unlawfully and is accepted as Corporate policy. Then, Article 56 of the Criminal Code, it is stipulated that in criminalizing a Corporation, it is obligatory to consider the level of loss or impact incurred, the level of involvement of management who has a functional position in the corporation, and/or the role of giving orders, control holders, and/or the beneficial owner of the corporation, the length of the Crime that has been committed, the frequency of criminal acts by corporations, the forms of criminal offenses, the involvement of officials,

the value of law and justice that lives in society, the corporation's track record in conducting business or activities, the influence of punishment on corporations, and/or Corporate cooperation in handling criminal acts.

Criminal punishment for corporations consists of principal and additional punishment as referred to in Article 118 of the Criminal Code Law. The main punishment is in the form of fines. In contrast, the additional punishment for Corporations consists of payment of compensation, repairs due to criminal acts, implementation of obligations that have been neglected, fulfillment of customary obligations, financing of job training, confiscation of goods or profits obtained from criminal acts, the announcement of court decisions, revocation of specific permits, permanent prohibition from carrying out certain actions, closing all or part of the Corporation's business premises and/or activities, freezing all or part of the Corporation's business activities, and dissolving the Corporation. Additional punishments in the form of revocation of specific licenses, closing all or part of the Corporation's business premises and/or activities, freezing all or part of the Corporation's business activities, or freezing all or part of the Corporation's activities shall be imposed for a maximum of 2 (two) years. Suppose the Corporation does not carry out additional punishment in the form of payment of compensation, reparation for the consequences of the Crime, implementation of obligations that have been neglected, fulfillment of customary obligations, and financing of job training. In that case, the assets or income of the Corporation may be confiscated and auctioned off by the prosecutor to fulfill the additional penalty that is not fulfilled. Based on Article 122 of the Criminal Code Law, fines must be paid within a certain period in a court decision, where a court decision can determine the payment of fines in installments. Suppose the fine is paid after the stipulated period. In that case, the property or income of the Corporation may be confiscated and auctioned off by the prosecutor to pay off the unpaid fine. Suppose the wealth or income of the Corporation is insufficient to pay off the fine. In that case, the Corporation is subject to a substitute punishment in the form of freezing some or all of the Corporation's business activities.

Against criminal acts by corporations, Article 123 of the Criminal Code Law regulates 3 (three) actions that can be imposed, namely corporate takeover, placement under supervision, and/or placement of Corporations under guardianship. Criminal acts by these corporations can be subject to strict liability or vicarious liability, as Article 37 of the Criminal Code stipulates that in cases determined by law, everyone can be convicted solely because the elements of a criminal act have been fulfilled without regard to mistakes, or being asked to respond for criminal acts committed by other people. Following the Elucidation of Article 37 in the Criminal Code Law, this provision contains the principle of absolute liability (strict liability), which determines that the perpetrator of a crime can be convicted only because the elements of the crime have been fulfilled from his actions or the perpetrators of a crime can be punished only because the elements of the crime have been fulfilled. Meanwhile, the principle of vicarious liability determines that everyone is responsible for actions committed by other people who do work or actions for him or within the limits of his orders so that a person's criminal responsibility



extends to the actions of his subordinates who do work or actions for him or within the limits of his orders. For example, the head of the company is responsible for the actions of his subordinates. Thus, strict liability or vicarious liability shows that, in some instances, it can be applied not only to the principle of no crime without fault, which is one of the main principles in criminal law.<sup>24</sup>

### C. Ideal Tax Liability Provisions for Corporate Taxpayers in Indonesia

The existence of the Criminal Code Law confirms that the *lex generalist* has regulated that what is meant by "everyone" in the criminal provisions of all laws in Indonesia are individuals, including Corporations. This differs from before the issuance of the Criminal Code Law; *PERMA* Number 13 of 2016 is a guideline for judges in Indonesia in filling the legal void in implementing corporations as legal subjects in criminal liability in Indonesia.

Although there is a slight difference in the formulation of corporations in the Criminal Code Law and entities in the *KUP* Law, the essence of both lies in associations that can be legal entities, thus, even though there is no definition of every person in the criminal provisions of the *KUP* Law, the existence of *PERMA* Number 13 of 2016 and the Criminal Code Law shows that "Every Person" in the criminal provisions of the *KUP* Law must be interpreted as an individual, including Corporations.

By interpreting the corporation as the subject of criminal acts in the field of taxation, the following matters apply in the handling of criminal acts in the field of taxation in Indonesia. First, corporate Taxpayers' criminal acts are committed by administrators inside and/or outside the organizational structure. Managers who are in the organizational structure have an available position or are people based on work relationships or based on other relationships which act for and on behalf of the corporation or act in the interests of the corporation within the scope of business or activities of the corporation, either individually or jointly. Meanwhile, administrators outside the organizational structure are the givers of orders, control holders, or beneficial owners of the corporation but can control the corporation. Thus, even though one or more administrators who are inside and/or outside the organizational structure resign or pass away, it does not result in the loss of the criminal responsibility of the Corporate Taxpayer or the said Corporate Taxpayer.

Furthermore, criminal acts in the field of taxation can be accounted for to a Corporate Taxpayer if the following matters can be fulfilled, namely included in the scope of business or activity as determined in the articles of association or other provisions that apply to said Corporate Taxpayer and/or benefit the Taxpayer Tax unlawfully and/or accepted as a policy of the Corporate Taxpayer and/or the said Corporate Taxpayer does not take the necessary steps to prevent, prevent a more significant impact and ensure compliance with applicable legal provisions in order to avoid the occurrence of criminal acts and / or the said Corporate Taxpayer allows a criminal act to occur.

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<sup>24</sup> BPHN, available at [https://bphn.go.id/data/documents/draft\\_ruukuhp\\_final.pdf](https://bphn.go.id/data/documents/draft_ruukuhp_final.pdf).

However, even though *PERMA* Number 13 of 2016 has been in effect and considering that the Criminal Code Law still needs to be socialized before 2025, it is suggested that there be an Attorney General's Regulation and/or a Supreme Court Regulation that regulates guidelines for handling criminal cases in the field of taxation which regulates the corporate criminal responsibility, including regulating strict liability and vicarious liability.

## 5. CONCLUSION

This study draws two conclusions. First, there is a legal vacuum in the criminal provisions of the *KUP* Law, which regulates the criminal liability of corporate taxpayers in Indonesia. This is because the element of the offense in the form of "everyone" contained in criminal provisions in the field of taxation is not defined in the *KUP* Law as a *lex specialist* of criminal law and is also not defined in the old Criminal Code (which is still valid until 2025) as a *lex generalist* of criminal law. Criminal law, so that *PPNS* within the *DGT* who carry out criminal investigations in the field of taxation must still carry out the mandate of Article 23A of the 1945 Constitution of the Republic of Indonesia and the principle of legality formulated in Article 1 paragraph (1) of the Criminal Code. Indeed, there is *PERMA* Number 13 of 2016, but these provisions are still in the *lex generalist* order and do not refer to tax crimes, and there is *SEMA* Number 4 of 2021. However, these provisions are only circulars and guidelines for judges, which are not binding on criminal offenses contained in the *UU KUP*. Second, ideally, the regulation of corporate tax liability in Indonesia in the future should be carried out through regulation of corporate criminal liability or corporate taxpayers in the renewal of the *KUP* Law and/or since the enactment of Law no. 1 of 2023 (*UU KUHP*) in the coming 2025. However, in the framework of uniform handling of tax criminal cases committed by the integrated criminal justice system in Indonesia against Corporations or Corporate Taxpayers due to limitations and/or incompleteness of tax laws and regulations and applicable criminal procedural law, it is necessary to enforce the law in the field of taxation reflecting legal certainty, a sense of justice, and benefit through the formation of laws in the form of Attorney General Regulations and Supreme Court Regulations which regulate guidelines for handling criminal cases in the field of taxation carried out by Corporate/ Corporate Taxpayers, including corporate criminal liability, as well as strict liability arrangements and vicarious liability.

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