



CORPORATE CRIMINAL LIABILITY IN TAX CRIMES IN INDONESIA

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Abstract

The complexity of business structures and the potential for tax avoidance through fictitious schemes contribute to the challenges associated with corporate tax compliance in Indonesia's self-assessment system. This study analyzes the general provisions and procedures of taxation (Tax Administration Law) and the new Criminal Code (KUHP) to understand how corporations are held accountable for tax crimes. The primary concerns pertain to the ambiguity of attributing culpability (mens rea) to non-human entities, the potential for overcriminalization of small corporations, and conflicts of interest within the Directorate General of Taxes (DJP), which fulfills a dual role as both investigator and fiscal authority. A normative legal methodology employing a legislative, conceptual, and historical approach was applied to examine the formulation of articles, corporate liability doctrines, and enforcement mechanisms through the HPP Law, the new KUHP, Supreme Court Regulation No. 13/2016, and Minister of Finance Regulation No. 17/2025. The analysis demonstrates that the legal framework has recognized corporations as criminal subjects through the doctrines of vicarious liability and identification theory, accompanied by penalties ranging from fines to dissolution. Nevertheless, the incentives for compliance mitigation remain limited. The principles of subsidiarity and restorative justice are regulated through voluntary disclosure and alternative penalties. However, implementation requires independent oversight to maintain checks and balances. The recommendations put forth include refining the definition of "directing mind," enhancing corporate compliance incentives, and harmonizing sectoral regulations to achieve a balanced enforcement between deterrence and substantive justice.

Keywords: Compliance, Justice, Corporations, Taxation, Criminal Liability

1. Introduction

Tax compliance constitutes a fundamental component of contemporary governance, as taxes not only serve to finance public needs but also function as the primary instrument for achieving social justice and sustainable development. Within the framework of the self-assessment system adopted by many countries, including Indonesia, each taxpayer is entrusted with the responsibility of calculating, reporting, and paying their own taxes through a Tax Return (SPT). However, this trust poses significant challenges when tax reporting or payment is not carried out in accordance with the regulations. Errors may arise from administrative negligence; however, they may also be intentional, thereby falling under the realm of criminal tax offenses. Regulations pertaining to administrative

sanctions are codified in the general tax provisions. However, in instances where violations constitute criminal acts, such as tax evasion, misuse of tax invoices, or registration of fictitious Taxpayer Identification Numbers (NPWP), the state responds with utmost firmness, enforcing compliance and deterring future violations through criminal sanctions.

The prevalence of corporate involvement in tax crimes is a salient issue in the contemporary business landscape, characterized by the intricate nature of business structures and the multifaceted nature of tax management mechanisms. Corporations, as legal entities separate from their owners and managers, have the capacity to perform various legal acts, including measures that can cause losses to the state through tax avoidance. In the corporate context, corporations are subject to a multifaceted regulatory framework that encompasses various special laws and regulations. These legal instruments encompass provisions pertaining to administrative matters, accounting practices, and corporate governance. Conversely, the General Provisions and Procedures of Taxation Law (KUP Law) No. 6 of 1983 (as amended most recently by Law No. 7 of 2021 on Harmonization of Tax Regulations) delineates the categories of tax-related criminal offenses, encompassing a spectrum of infractions ranging from administrative negligence in filing tax returns to deliberate acts resulting in state losses. These transgressions are subject to criminal penalties, including financial sanctions and/or incarceration. It is noteworthy that the provisions concerning criminal offenses in the UU KUP, including Articles 38, 39, and 39A, make no distinction between individuals and legal entities. Consequently, there is a lack of consensus regarding the enforcement of corporate criminal liability, given that corporations are only able to act through their human agents.

The notion of extending criminal liability to corporations in the context of tax affairs is influenced by theoretical discourse. From a traditional criminal law perspective, the presence of an element of fault (*mens rea*) and an unlawful act (*actus reus*) is essential. However, these elements can only be fulfilled by humans. Conversely, in contemporary business practices, corporations frequently function as the primary entities in the



formulation and implementation of sophisticated tax avoidance strategies. The doctrine of identification posits that the actions and inner intentions of the directors or "directing mind" of a company should be directly attributed to the corporation. This doctrine suggests that the corporation should be subject to the same legal consequences as if it were a human being. Conversely, the doctrine of vicarious liability enables the prosecution of corporations for the actions of their employees or other parties with whom they have an employment or other relationship, even in the absence of direct evidence of the corporation's fault. In addition to these two doctrines, the principle of strict liability has emerged in certain special regulations. In such cases, formal violations of tax obligations by a corporation may be subject to criminal sanctions without requiring proof of intent or negligence.

Recent legislative developments indicate that provisions pertaining to corporate criminal liability have been incorporated explicitly into legislation external to the Criminal Code. For instance, Article 20 of Law No. 31 of 1999 on the Eradication of Corruption (as amended by Law No. 20 of 2001) stipulates that criminal charges may be brought against corporations and/or their directors, provided that the corruption was committed by "persons" who have an employment relationship or other relationship with the corporation. Consequently, corporations as legal entities may incur criminal fines, while their officers representing the corporation may also be subject to prosecution. This regulatory framework establishes a precedent for the tax field, where a similar conceptual framework is anticipated to be implemented. Consequently, not only individuals within the corporation may face legal prosecution, but the corporation itself may incur substantial financial and reputational penalties.

Nevertheless, despite the legal basis for prosecuting corporations, implementation often faces obstacles. First, the impartiality of law enforcement officials in mapping corporate accountability structures is often hampered by the complexity of ownership and affiliate networks. Secondly, the imposition of criminal fines on corporations is often regarded as disproportionate to the potential financial gains derived from such practices.



Thirdly, tax agencies and law enforcement officials have yet to establish comprehensive, standard guidelines for the systematic processing of corporate criminal cases. This includes procedures for identifying the "directing mind" and examining corporate internal documents. Fourthly, tax courts and general courts must implement regulatory harmonization to ensure the effective enforcement of criminal tax rulings against corporations.

The present study concentrates on the regulatory framework pertaining to tax crimes perpetrated by corporations. The primary inquiry pertains to the manner in which the norms delineated in the KUP Law, its implementing regulations, and provisions extant outside the Criminal Code are implicated in the regulation of corporate criminal activity within the domain of taxation. This encompasses the formulation of offenses, the legal subjects to which they pertain, and the sanctions and enforcement mechanisms that are employed. It is imperative to comprehend the regulatory framework in order to address the existing normative discrepancies. This comprehension facilitates the formulation of recommendations aimed at enhancing the efficacy of corporate tax criminal law enforcement. A key objective of this enhancement is to ensure that the burden of sanctions is not exclusively shouldered by individuals but is also distributed among entities that derive benefit from tax violations.

This study is expected to provide answers to a number of strategic sub-questions, including the following: The manner in which the Criminal Code defines and distinguishes between administrative violations and criminal tax offenses; The extent to which corporations as legal entities are recognized as subjects of criminal offenses;

The types of corporate liability doctrines, identification, vicarious liability, and strict liability applied in prosecution practice; The regulatory and procedural obstacles faced in corporate criminal cases; and Recommendations for improving the legal framework so that corporate tax criminal enforcement can provide a deterrent effect and proportional justice. Consequently, the present study will not address other aspects such as individual criminal liability, administrative sanctions, or extensive cross-country



comparisons. Instead, it will focus specifically on Indonesia's national regulations regarding corporate tax crimes.⁷

The central inquiry of this study pertains to the regulatory framework governing the commission of criminal tax offenses by corporations. The present study aims to provide a comprehensive account of the normative basis, principles of corporate accountability, and enforcement mechanisms within the framework of criminal tax law in Indonesia. The analytical approach will examine primary legislation, including the General Provisions and Procedures of Taxation Law (UU KUP) and criminal laws outside the Criminal Code (KUHP), as well as legal doctrines from judicial practice. The aim of this examination is to identify concrete recommendations to strengthen regulatory provisions to address tax crimes involving corporations.

The theory of the rule of law (Rechtsstaat) posits that states must not act in an arbitrary manner; rather, they must be subject to the supremacy of law that is transparent, written, and certain. In the classical concept of the formal rule of law, the existence of written legislation is prioritized as the source and limit of state power. Concurrently, the theory of the material rule of law has been shown to broaden the concept of the supremacy of law to encompass more than mere formalities, thereby underscoring the substance of material justice.

Consequently, the contemporary rule of law integrates the concept of a "rule of law," which encompasses a systematized arrangement of public authority, with the "rule of just law." The latter term signifies the imperative for safeguarding human rights, ensuring equality before the law, constraining the legislative, executive, and judicial branches, and ensuring universal access to legal redress for all citizens. These fundamental principles include legality, non-discrimination, separation of powers, an independent and impartial judiciary, and guarantees of human rights.

In the context of corporate tax crimes, the prevailing legal theory offers a foundational framework for evaluating the compliance of tax regulations, particularly.



those pertaining to criminal sanctions for legal entities, with the principles of legality, clarity of formulation, proportionality of sanctions, and protection of the rights of the accused.

Regulations should explicitly delineate the elements of the offense and the legal subjects, including corporations as legal entities, to achieve legal certainty and circumvent ambiguity. In accordance with the rule of law, each criminal enforcement action must be founded upon valid regulations that have been promulgated in advance and are not retroactive. This ensures that corporations are aware of the limits of their authority and the legal consequences of noncompliance. The principle of limitation of power is also instrumental in ensuring that enforcement does not devolve into a tool for administrative oppression. Rather, it is maintained under the purview of judicial control and social oversight mechanisms.

Research Methodology

The author will employ a normative legal research method that integrates legislative, conceptual, and historical approaches. This methodology is deemed the most suitable for examining criminal tax regulations imposed on corporations, as normative legal research synthesizes legislative, conceptual, and historical approaches to address the research inquiries. In accordance with the principles of the Rule of Law, all norms must be subject to the principles of legality, clarity of formulation, and legal certainty. Consequently, the legislative approach serves as the primary foundation for systematically mapping the entire body of positive law. This includes the General Provisions and Procedures of Taxation Act and implementing regulations and laws outside the Criminal Code that govern corporate liability.

The researcher examines the phrase "every person" in Articles 38, 39, and 39A of the Tax Procedures Law and the corporate clause in Article 20 of the Law on the Eradication of Corruption. The researcher then identifies whether the formulation meets the principle of legality, namely that criminal offenses are clearly and precisely defined



and announced before being enforced, as well as the principles of non-retroactivity and legal certainty. A conceptual analysis is imperative to elucidate pivotal terms such as "corporation," "criminal liability," "identification doctrine," "vicarious liability," and "strict liability." This analysis will ascertain whether the structure of the norms is consistent with the principles of the material rule of law, namely substantive justice.¹³

This conceptual study includes an examination of the doctrines and opinions of legal experts who have shaped the concept of corporate liability. Thus, the theoretical framework of the rule of law not only serves as a normative foundation but also as a benchmark for how far regulations have protected the legal rights of corporations, ensured equality before the law, and limited the scope of interpretation by law enforcement officials.

Moreover, a historical approach is adopted to trace the evolution of corporate tax regulation from the implementation of the Principle of Administrative Loyalty to the harmonization of current tax regulations. By comprehending the evolution of corporate tax law, researchers can evaluate the consistency and sustainability of regulatory reforms in accordance with the principles of transparency and social control in the rule of law. Furthermore, researchers can identify transformative moments where formal norms are balanced with substantive justice, such as through the addition of corporate liability clauses in economic criminal law.

The research was conducted with the objective of collecting primary legal data. To this end, an exhaustive review of official legislative documents was undertaken, encompassing the Tax Administration Law (KUP), the Law on the Eradication of Corruption-Related Criminal Acts, government regulations, and ministerial regulations. Secondary legal materials were obtained from academic literature, legal journals, court decisions related to criminal sanctions for corporate taxation, and expert opinions. The data collection techniques employed documentary studies, wherein each norm was subjected to qualitative analysis based on the principles of legality (*lex certa*), equality.



before the law, and due process of law. A data analysis was conducted by examining the adequacy of the formulation of norms (*actus reus* and *mens rea* of corporations), prosecution procedures, and legal protection mechanisms for corporations in court.

Research Findings

In the context of Indonesian criminal law, regulations pertaining to tax crimes committed by corporations constitute a pivotal element that mirrors the progression of the legal community's cognisance of subjects of criminal law extending beyond human individuals. This analysis is predicated on pivotal provisions, chief among them Law No. 6 of 1983 on General Provisions and Procedures for Taxation (Tax Code), which has undergone multiple amendments, most recently through Law No. 7 of 2021 on Harmonization of Tax Regulations (UU HPP), in addition to Law No. 1 of 2023 on the Criminal Code (KUHP baru), which unambiguously acknowledges corporations as criminal entities. This normative approach aims to analyze how these regulations govern corporate liability in tax crimes, including the definition of subjects, types of offenses, sanctions, and legal implications, while ensuring that the analysis remains focused on the Indonesian legal framework currently in force.

The notion of corporations as perpetrators of criminal acts within the context of Indonesian criminal law is not a recent development; however, it has undergone a progression since its initial recognition in sectoral laws, such as Law No. 31 of 1999 on the Eradication of Corruption. However, within the domain of taxation, these regulations are subject to more precise regulation under the provisions of the KUP Law, which incorporates criminal sanctions as an integral component of state administrative law. Article 1(6) of the KUP delineates a corporation as a legal entity or business entity endowed with the capacity to perform legal acts. This development in the legal framework signifies a departure from the previous exclusive emphasis on corporations as economic entities, thereby recognizing them as subjects that can be held criminally liable. This is consistent with the principle of "vicarious liability" in contemporary criminal law, which holds that a corporation is legally responsible for the actions of its directors or employees if those actions are undertaken within the scope of the corporation's responsibilities.



Amendments to the Tax Administration Law have led to the further strengthening of this provision, with the aim of addressing tax evasion practices by corporations. These practices frequently involve complex schemes, such as the use of fictitious tax invoices or the manipulation of financial statements.

According to the prevailing norms, the regulatory framework pertaining to tax crimes committed by corporations is delineated in Chapter VIII of the KUP Law, particularly within Articles 38 to 43A. These articles delineate a distinction between formal offenses and material offenses. Article 38 of the KUP stipulates criminal sanctions for negligence that results in state losses, including the failure to submit a Tax Return (SPT) or the provision of false information, with penalties ranging from imprisonment for up to one year to a fine equivalent to twice the amount of tax owed. For corporations, this liability is applied through Article 43 of the KUP, which states that if a criminal offense is committed by a corporation, criminal penalties are imposed on the directors or representatives of the corporation. However, the corporation itself may also be subject to criminal penalties in the form of fines increased up to four times the amount. A normative interpretation of this provision reveals a dual liability structure: individual (officers) and collective (corporation). This structure is aimed at preventing corporations from using their organizational structure as a shield against criminal liability. Additionally, Article 39 of the Tax Administration Law addresses intentional offenses, such as tax document forgery or active tax evasion, with penalties that include imprisonment for up to six years and fines of up to four times the amount of taxes owed. These penalties also apply to corporations through the mechanism of criminal substitution.

The notion of corporations as criminal subjects in the KUP is reinforced by the provisions of the new Criminal Code (Law No. 1 of 2023), particularly Articles 45 to 52. These articles explicitly stipulate that corporations can be considered perpetrators of criminal acts if such acts are committed by or on behalf of the corporation and benefit the corporation. This constitutes a substantial revision of the previous Criminal Code, which exhibited a more individual-oriented framework, and it is consistent with global trends as



articulated in the United Nations Convention Against Corruption (UNCAC). In the context of taxation, the integration of the KUP Law and the new Criminal Code engenders a more coherent framework, whereby corporations are subject to both administrative sanctions, such as fines or revocation of business licenses, and criminal penalties as a final measure, i.e., in instances where administrative sanctions have failed. For instance, Article 39A of the KUP Law, which was added through the HPP Law, regulates criminal offenses related to tax evasion through transfer pricing schemes by multinational corporations. The penalty for such crimes may include a prison sentence of up to ten years, reflecting a preventive and repressive approach toward corporations that exploit international legal loopholes.

An analysis of the legal principles underlying this regulation reveals the application of the principle of legality (*nullum crimen sine lege*) in Article 1(1) of the new Criminal Code, which requires that every criminal offense be clearly defined in law. In the KUP Law, the formulation of offenses such as "any person" in Article 39 is interpreted systematically with Article 43, thereby ensuring legal certainty. Nevertheless, normative challenges emerge in determining the fault (*mens rea*) of corporations, as corporations are not biological entities capable of intent. In this case, the identification theory doctrine is employed, whereby the culpability of the directors is attributed to the corporation itself. This principle is exemplified by Supreme Court Decision No. 2239 K/Pid.Sus/2012, which imposed a financial penalty on the corporation Asian Agri for tax-related criminal infractions. This decision establishes a normative precedent, indicating that corporations can be held criminally liable independently, even in cases where directors are also prosecuted. The primary sanction imposed in such instances is financial, in the form of fines, with the aim of averting social impacts such as bankruptcy that could potentially result in harm to employees.

Moreover, this regulation incorporates the principle of subsidiarity, which dictates that criminal sanctions are to be exercised solely in instances where administrative sanctions prove inadequate. This principle is codified in Article 41 of the Tax



Administration Law, which stipulates the availability of resolution through administrative channels prior to the initiation of criminal proceedings. For corporations, this is of particular concern because tax crimes frequently originate from administrative negligence, such as errors in calculating Income Tax (PPh) or Value-Added Tax (PPN). An analysis of the HPP Law reveals its role in fortifying this mechanism by introducing Article 41C, which governs the recuperation of state losses through the imposition of substitute penalties, such as the confiscation of corporate assets, in instances where financial penalties remain unpaid. This approach aligns with the tenets of restorative justice in economic criminal law, where the primary objective is the recovery of state losses rather than retribution. However, a prevailing critique of this regulation is the absence of explicit provisions concerning corporate compliance programs as a mitigating factor, which could result in a reduction in sanctions if corporations have implemented internal prevention systems, as recommended in the extant literature on corporate criminal law.

From a legal vantage point, the governance of tax crimes perpetrated by corporations is inextricably linked to Law No. 28 of 2007 concerning the Third Amendment to the Tax Administration Law. This legislative act serves to augment the authority of the Directorate General of Taxes (DGT) to undertake preliminary investigations (Article 44B), a prerogative that extends to corporate entities. This procedural framework is subject to normative regulation, aimed at safeguarding the principles of due process. It confers upon corporations the right to a defense by their legal representatives, as delineated in Article 28D(1) of the 1945 Constitution. This provision prevents the abuse of authority by the tax authorities, as investigations must be based on sufficient preliminary evidence. If the investigation is not continued to a full investigation, the process is terminated without prejudice. For corporations, this implies the need for a robust internal audit system to prevent offenses such as those regulated under Article 13 of the Tax Administration Law, namely the misuse of Taxpayer Identification Numbers (NPWP) by corporations to evade taxes.



Moreover, this regulation is consistent with Supreme Court Regulation No. 13 of 2016 on Procedures for Handling Criminal Cases Involving Corporations, which establishes procedural guidelines for courts in handling corporate cases, including in the domain of taxation. This regulation addresses a normative gap in the Criminal Procedure Code (KUHP) by establishing that, in cases where corporations are represented by their directors or legal counsel, and criminal penalties are imposed in the form of fines, revocation of rights, or dissolution of the corporation as additional sanctions, the directors or legal counsel shall be deemed to have accepted the penalties on behalf of the corporation. Within the domain of taxation, this stipulation signifies that corporations found guilty of criminal acts, such as tax evasion through subsidiaries, may be subject to cumulative criminal penalties. This development serves to reinforce the deterrent effect, thereby ensuring that corporations are dissuaded from engaging in such illicit practices. A normative analysis of this Perma indicates compatibility with Article 52 of the new Criminal Code (KUHP), which provides for principal criminal penalties for corporations in the form of fines of up to Rp50 billion, adjusted according to the scale of losses.

The author asserts that a comprehensive discussion necessitates an examination of the preventive aspect, wherein the Tax Administration Law, through Article 36A, fosters a voluntary disclosure program for corporations to disclose tax errors prior to an audit, with the potential to mitigate criminal penalties. This principle is reflected in the context of prosecution, wherein the Attorney General reserves the right to discontinue legal proceedings, provided that the corporation has adequately compensated the affected parties for the incurred losses. However, should the offense proceed to court, Article 43A of the KUP Law permits the imposition of criminal penalties on corporations independently, even in cases where the directors have died or fled. This represents a normative innovation aimed at closing loopholes that allow for impunity.

This regulatory framework exhibits a greater degree of progressiveness in comparison to other legal instruments, such as the Environmental Law, which acknowledges corporate criminal liability but does not provide a comprehensive delineation of the accountability mechanism. In the domain of taxation, the emphasis on



financial losses to the state renders sanctions more economically oriented. Illustrative of this are sanctions such as fines calculated based on a multiplier of the tax owed, as stipulated in Article 14 of the KUP Law. A normative criticism is the potential for overcriminalization, where small corporations may be heavily burdened, thus requiring a teleological interpretation by judges to ensure proportionality.

The regulation of corporate tax crimes in Indonesia has evolved into a comprehensive framework, supported by the KUP Law, the new Criminal Code, and the Supreme Court Regulation. This framework ensures collective accountability while upholding fundamental legal principles. However, to enhance the effectiveness of these measures, further amendments are necessary to explicitly integrate elements of compliance and restorative justice. This integration is crucial to ensure that these regulations are not only repressive but also preventive, thereby supporting national economic development.

Discussion

The regulation of corporate tax crimes can be examined through the lens of the Rule of Law Theory (*Rechtsstaat*), which emphasizes the supremacy of law as the fundamental basis of governance. In this theoretical framework, law functions not only as a means of state power but also as a guardian of the rights of individuals and entities, including corporations. This ensures that substantive justice is upheld, superseding procedural formalities. This theory, which is rooted in the philosophies of Immanuel Kant and further developed in a modern context by thinkers such as Lon Fuller with the principles of the "inner morality of law," demands that criminal regulations be characterized by several key features. Firstly, these regulations must be clear, predictable, and non-retroactive in nature. Secondly, they must be fair in their distribution of burdens and benefits, avoiding discrimination. Finally, they must support the objectives of the Indonesian rule of law as reflected in the principles of the Indonesian Constitution, particularly Article 27(1) on



equality before the law and Article 28D(1) on the right to a fair trial. In this analysis, the author will examine these regulations in depth, highlighting their strengths and weaknesses from the perspective of the Rechtsstaat, without straying into non-legal issues such as macroeconomic impacts or excessive international comparisons. Rather, the analysis will remain focused on the norms that currently apply in Indonesia.

The primary regulations governing corporate tax crimes in Indonesia are centered on Law No. 6 of 1983 on General Provisions and Procedures for Taxation (UU KUP), which has undergone multiple amendments, most recently through Law No. 7 of 2021 on Harmonization of Tax Regulations (UU HPP), and is supported by Law No. 1 of 2023 on the New Criminal Code (KUHP). Despite its transition period until 2026, the KUHP has become the normative reference for interpreting sectoral provisions. From the perspective of the Theory of the Rule of Law, the recognition of corporations as criminal subjects in Article 43 of the KUP signifies a progressive development. This is due to the fact that it reflects the principle of equality before the law. Corporations, as state-created entities, should not be exempt from liability merely due to their non-physical nature.

As Fuller has stressed, the law must be general in nature and apply to all subjects without exception. The article posits that in the event of a criminal act committed by a corporation, the onus falls on its directors or representatives to face the associated penal consequences. Additionally, the corporation itself is held liable for a sanction that can reach up to fourfold the amount of the initial fine, thereby implicitly adopting the doctrine of vicarious liability.

However, this provision still raises ambiguities in the attribution of fault (*mens rea*) to corporations. The Rule of Law Theory demands clarity in the formulation of offenses to ensure legal predictability. In this case, identifying the fault of directors as the fault of the corporation could lead to injustice if the directors acted beyond their authority. This contradicts the clear and specific principle of "no one is punished except for a breach of law."

Moreover, Chapter VIII of the Tax Administration Law, specifically Articles 38 to 39A, delineates tax offenses as either negligence (Article 38) or intentional acts (Article



39). The criminal penalties for negligence include a maximum sentence of one year's imprisonment or a fine, while those for intentional acts encompass a maximum penalty of six years' imprisonment, along with a fine amounting to up to four times the amount of tax owed. These provisions are further extended to corporations through Article 43. From the perspective of a Rechtsstaat, this regulation is consistent with the principle of the supremacy of law. It establishes criminal sanctions as the ultimate remedy, only to be invoked after the failure of administrative sanctions, such as fines or warnings, as outlined in Article 41. This reflects the principle of proportionality in the use of state power.

However, an in-depth analysis reveals significant shortcomings in the regulation. Corporations often possess the financial resources to circumvent detection through the implementation of complex schemes, such as transfer pricing or the use of fictitious invoices. This regulatory framework exhibits characteristics of discrimination against small corporations, which lack the capacity to establish compliance systems. This stands in direct opposition to the tenets of substantive justice, which demands the protection of the vulnerable. This is further reinforced by the fundamental principle of social justice for all Indonesian people, as outlined by Pancasila's principles.(Wirya C Zahran, 2024) Moreover, the amendment through the HPP Law introduces Article 39A on tax evasion, which imposes a maximum penalty of ten years' imprisonment, thereby enhancing the normative strength of prevention measures. However, the absence of mitigation mechanisms grounded in compliance threatens to contravene the fundamental tenet of restorative justice, a principle that ought to be an inextricable component of a contemporary rule-of-law state. In such a state, the legal system is not merely confined to the pursuit of retribution but also encompasses the imperative of rehabilitation.

The recent integration of the revised Criminal Code has served to enhance the scope and implications of this regulatory framework. Notably, Articles 45 to 52 have been amended to explicitly acknowledge the role of corporations as potential criminal entities, provided that the act in question is perpetrated for the benefit of the corporation. The sanctions imposed under this framework encompass a range of penalties, including but not limited to financial penalties amounting to a maximum of Rp50 billion, the revocation



of certain rights, and the dissolution of the corporation.³³ This approach is consistent with the theoretical framework of the rule of law, as it fosters collective accountability and prevents the occurrence of impunity, which could potentially erode public trust in the legal system. As Kant has emphasized, the efficacy of the rule of law is contingent upon its consistent enforcement. However, a significant body of literature has emerged that challenges the legitimacy of this practice from the perspective of the separation of powers. The Directorate General of Taxes (DJP) is entrusted with the role of a civil investigator under Article 44 of the Tax Administration Law, a mandate that is further delineated by Minister of Finance Regulation (PMK) No. 17 of 2025 on Criminal Investigations in the Tax Field. This confluence of roles raises concerns about potential conflicts of interest, as the DJP functions as both the fiscal authority and the investigative entity. This arrangement could potentially contravene the principle of impartiality that is fundamental to a Rechtsstaat.

The PMK 17/2025, issued in February 2025, establishes a systematic framework for the investigation process, from the issuance of summons to its termination. This framework enhances legal certainty by underscoring the rights of corporate suspects to legal assistance and adequate preliminary evidence. This development represents a significant advancement in the protection of human rights, as outlined in Article 28I of the 1945 Constitution. However, it is imperative to note that the efficacy of these provisions is contingent upon the discretion of the DGT investigators. Absent the independent oversight provided by institutions such as the Judicial Commission, there is a potential for abuse of power, which is contrary to the principle of checks and balances that is essential in a state governed by the rule of law.

The protocol for addressing corporate cases involving tax crimes is also subject to Supreme Court Regulation (Perma) No. 13 of 2016 on Procedures for Handling Criminal Cases by Corporations, which underwent a revision through public consultation in



February 2025 to elucidate corporate liability even in instances of altered corporate structure.

From the perspective of the Theory of the Rule of Law, this Perma supports procedural clarity, where corporations are represented by their directors or legal counsel in court, and sanctions such as asset seizure or dissolution are only imposed if proportional to the state's losses. However, a critical analysis reveals a glaring omission: the absence of any substantive justice for corporations as entities that support the economy. To illustrate this point, consider the potential consequences of dissolution for corporations found guilty of tax offenses. Such actions could result in widespread unemployment, a circumstance that stands in direct opposition to the fundamental objective of the Indonesian legal state as articulated in the preamble to the 1945 Constitution, which aims to achieve general welfare.

Furthermore, Minister of Law and Human Rights Regulation No. 2 of 2025 on Identifying Beneficial Owners of Corporations in the Context of Preventing Money Laundering and Terrorist Financing expands the regulation by requiring transparency of beneficial ownership. This normatively strengthens the prevention of tax crimes by shell corporations, in line with the principle of transparency in the Rechtsstaat. However, this obligation could impose an undue administrative burden on small corporations, resulting in inequality that contravenes the principle of equality before the law.

The KUP Law, through Article 36A, encourages voluntary disclosure for corporations to disclose tax errors before an audit, which can reduce criminal sanctions. This is consistent with the principle of opportunity in prosecution that supports the efficiency of the rule of law. However, the efficacy of this program is called into question due to the absence of substantial incentives, such as notable reductions in fines. Consequently, large corporations demonstrate a preference for litigation over compliance, thereby subverting the law's preventive purpose. As Fuller asserts, the law should



inherently promote prosocial behavior.(Prasetyo, 2024) Furthermore, Article 41C of the Tax Administration Law, which stipulates the recovery of losses through criminal penalties, such as the seizure of corporate assets, is consistent with the principles of restorative justice. However, the absence of clear limitations on the assets that can be seized raises concerns. This potential lack of limitation could potentially violate the right to property protected by Article 28G of the 1945 Constitution, resulting in an injustice where corporations are punished beyond their wrongdoing.

In addition, this regulation must be evaluated in accordance with the principle of legality as outlined in Article 1(1) of the new Criminal Code. This principle stipulates that offenses must be clearly defined. Within the framework of the Tax Administration Law, the term "any person" is interpreted to encompass corporations through a systematic interpretation approach. This fulfills the aforementioned requirement. However, concerns have been raised regarding the potential for overcriminalization, wherein corporate administrative negligence is directly elevated to criminal liability without adequate gradation. This contradicts the principle of minimal intervention in a rule-of-law state.⁴⁰ For instance, in seminal Supreme Court rulings such as the Asian Agri case, corporations were subjected to substantial fines for tax manipulation, underscoring the efficacy of enforcement measures. However, the absence of consideration for social impacts signifies a deficiency in achieving substantive justice. PMK 17/2025 aims to address this issue by incorporating human rights into investigative procedures. This includes prohibiting torture and ensuring the right to a defense, thereby strengthening the principles of due process. However, the absence of autonomous mechanisms to oversee the DJP renders this regulation susceptible to bias, wherein the state, in its capacity as the tax creditor, assumes the roles of both judge and jury, thereby violating the principle of separation of powers.⁴¹



The tax crime regulations for corporations in Indonesia have evolved into a more mature framework with the introduction of PMK 17/2025 and the integration of the new Criminal Code. This integration supports the rule of law and the prevention of state losses. However, from the perspective of the Theory of the Rule of Law, there are critical weaknesses in substantive justice, such as discrimination against small corporations, potential abuse of power, and a lack of focus on restorative justice. Thus, it does not yet fully meet substantive justice because it is still more oriented towards retribution than holistic fairness that guarantees equality and proportionality for all parties. To achieve substantive justice, it is imperative to implement amendments that will integrate compliance incentives and independent oversight. These regulations must be crafted in such a manner that they genuinely reflect a just and humane rule of law.

Comprehensive reforms are imperative to fortify the prevailing legal framework, thereby attaining a harmonious equilibrium between rigorous law enforcement and substantive justice. First, regulations such as the General Provisions and Tax Procedures Law (KUP Law), which has been amended through the Tax Harmonization Law (HPP Law) and supported by the *Undang-Undang Hukum Pidana* (KUHP), should be enriched with more explicit provisions on the doctrine of corporate liability, such as identification and vicarious liability, to eliminate ambiguity in the attribution of mens rea to non-human entities. This will guarantee that corporations are unable to utilize their organizational structure as a defense mechanism while simultaneously safeguarding their fundamental rights in accordance with the tenets of the rule of law. It is therefore recommended that legislators revise Article 43 of the KUP by adding a clear definition of "directing mind" and a mechanism for proving collective fault, which could reduce uncertainty in prosecution and prevent overcriminalization of small corporations that may be disproportionately burdened.

In addition, to enhance the effectiveness of prevention, regulations should integrate corporate compliance programs as a mitigating factor for sanctions. Corporations that have implemented internal audit systems and anti-tax avoidance training can receive reduced fines or dismissal of criminal charges, as recommended in the document from a



restorative justice perspective. This objective can be accomplished by amending Article 36A of the Tax Administration Law, which presently promotes voluntary disclosure. The amendment should include specific incentives, such as reduced fines for corporations that proactively disclose errors before an audit. This approach would not only recover state losses but also promote a culture of long-term compliance.

Furthermore, it is imperative that enforcement procedures by the Directorate General of Taxes (DGT) be overseen by an autonomous entity, such as a special commission comprising representatives from the Supreme Court and civil society, to circumvent potential conflicts of interest where the DGT functions in both the fiscal and investigatory capacities, in accordance with Minister of Finance Regulation No. 17 of 2025. This oversight will fortify the principle of checks and balances, ensuring that preliminary evidence examinations are not misused and that corporations' rights to due process are upheld, thereby mitigating the risk of abuse of power that could erode public trust in the tax system.

Conversely, criminal sanctions imposed on corporations ought to be more proportionate. In this regard, the KUP Law stipulates that fines may be increased up to fourfold the amount of tax owed, with adjustments made to the scale of the company and its social impact. For instance, the dissolution of corporations may be limited to cases of repeated violations resulting in substantial state losses, thereby averting mass unemployment or local economic destabilization.

This recommendation is consistent with Supreme Court Regulation No. 13 of 2016, which can be updated to include guidelines for judges in considering mitigating factors such as the corporation's contribution to national development. This would ensure that criminal penalties do not become a mere tool for retribution but an instrument for holistic justice. Furthermore, the implementation of transparency measures concerning beneficial ownership, as outlined in Ministry of Law and Human Rights Regulation No. 2 of 2025, should be expanded to encompass an annual reporting requirement integrated into the tax administration system. However, micro-enterprises should be exempted from this requirement to mitigate the imposition of excessive administrative burdens. This



approach would effectively prevent the utilization of shell corporations for the purpose of tax evasion, while ensuring that small entities are not subjected to undue discrimination. It is imperative that harmonization between the Tax Administration Law, the new Criminal Code, and other sectoral regulations be prioritized by the legislature. To this end, the establishment of a special team involving criminal law experts and tax practitioners is necessary to draft integrated legislation that accommodates the evolution of modern business, including transfer pricing in multinational corporations. This will address existing normative gaps, such as the absence of strict liability provisions for formal offenses, and ensure that regulations are not only repressive but also preventive. Consequently, this will support Indonesia's rule of law objectives in achieving social justice and sustainable development. This approach has the potential to enhance the efficacy, fairness, and sustainability of the enforcement of criminal tax law against corporations. Consequently, it can contribute to an increase in state revenue without compromising the fundamental principles of human rights and equality before the law.⁴⁷

Conclusion

The regulatory framework governing corporate tax crimes in Indonesia has undergone significant evolution, resulting in a legal infrastructure that is increasingly comprehensive. However, it is evident that further refinement is necessary to optimize the efficacy of these regulations. According to the prevailing legal norms, as articulated in the General Provisions and Procedures of Taxation Law (UU KUP) and the Criminal Code (KUHP), corporations are now recognized as potential subjects of criminal liability. This recognition is founded on the doctrine of vicarious liability, which holds the entity accountable for the actions of its representatives or the "directing mind." The strengthening of criminal sanctions, including fines, imprisonment, and dissolution of companies, reflects a repressive approach aimed at deterrence, particularly through Article 39A of the UU KUP, which targets multinational tax evasion schemes with severe criminal penalties. This disposition is balanced by the principle of subsidiarity, whereby administrative channels are the preferred option before entering the criminal process, and a voluntary disclosure mechanism provides an opportunity for mitigation of sanctions, although incentives are still limited.



From the perspective of the principle of the rule of law (Rechtsstaat), this legal framework has fulfilled the principles of legality and legal certainty with the clarification of criminal offenses through amendments to the HPP Law and the integration of the new Criminal Code. Supreme Court Regulation (Perma) No. 13 of 2016 and Ministry of Finance Regulation No. 17 of 2025 further delineate the procedures for handling corporate cases and tax crime investigations, including the protection of the human rights of corporate suspects. However, there are critical challenges related to the potential abuse of authority by the Directorate General of Taxes (DJP), which plays a dual role as both investigator and fiscal stakeholder. This necessitates the strengthening of checks and balances through an independent oversight body.

In essence, the legal system continues to prioritize retribution over restorative justice. Consequently, small corporations that have not yet developed compliance systems are susceptible to overcriminalization. The absence of incentive mechanisms for corporate compliance programs undermines the preventive function of regulations, particularly in cases where large corporations prioritize litigation over voluntary disclosure. Furthermore, the ambiguity in the attribution of mens rea to non-human entities necessitates a more precise delineation of the role of the "directing mind" and the boundaries of collective responsibility. This is essential to ensure that corporate prosecution does not engender legal uncertainty and substantive injustice.

Therefore, comprehensive reform is necessary, with a primary focus on revising Article 43 of the Tax Administration Law to include a definition of "directing mind" and clear procedures for proof, expanding incentives for voluntary disclosure through significant reductions in fines, and establishing an independent oversight mechanism for the Tax Administration Agency. It is imperative that harmonization between the Tax Procedure Law, the new Criminal Code, the Supreme Court Regulation, and other sectoral regulations be sustained through the efforts of an integrated legislative team. This team should comprise academics, tax practitioners, and judicial officials, thereby ensuring a comprehensive and coordinated approach to legal and regulatory development in this domain. This approach is predicated on the notion that the enforcement of corporate tax criminal law will be more balanced between enforcement, prevention, and substantive justice. The implementation of this approach will support Indonesia's rule of law objectives in achieving social justice, legal certainty, and sustainable development.



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