

Ultimum Remedium as a State Loss Recovery Mechanism in Corporate Tax Crimes

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ABSTRACT

The ultimum remedium principle in tax criminal law is designed as the last limit in law enforcement, which is only used when administrative efforts are no longer effective. However, in the practice of handling corporate tax crimes in Indonesia, this principle is often ignored, so that punishment becomes the first step instead of the last resort. This research aims to analyze the effectiveness of the ultimum remedium as a mechanism to recover state losses and assess the extent to which its implementation reflects the principles of justice and fiscal efficiency. Using a normative juridical approach with the support of empirical data from court decisions and interviews, this research finds that the principle has not been applied consistently, and tends not to have a significant impact on state financial recovery. As a novelty, this research proposes a restorative fiscal justice approach model that places the ultimum remedium as an active strategy to recover losses, not just a criminal limitation principle. The findings are expected to strengthen the direction of economic criminal law reform that is more proportional, efficient, and adaptive to the country's fiscal needs.

Keywords: Corporate Tax Crimes, Economic Criminal Law, Fiscal Recovery, Restorative Justice, State Losses, Ultimum Remedium,

Introduction

Tax crime cases committed by corporate entities continue to show an increasing trend in the past decade (Bourton & Ryder, 2022; Lund & Sarin, 2021; Nurferyanto & Takahashi, 2024; YEHESKIEL MINGGUS TIRANDA, BAHTIYAR EFENDI, 2023). Based on data from the Directorate General of Taxes (DGT), from 2022 to 2023 there were more than 150 cases of tax evasion involving business entities, with a total potential state loss of more than IDR 7.4 trillion (Mohamed Saniff et al., 2024). The modes used are increasingly complex, ranging from manipulation of fictitious tax invoices, transfer pricing, to the use of nominees to hide the actual beneficiaries. This phenomenon shows that the avoidance of tax obligations by corporations has become a serious threat to the country's fiscal sovereignty.

In the context of law enforcement, the ultimum remedium principle is adopted to encourage administrative settlement first before resorting to criminalization (Abdurrachman et al., 2021; Jadidah, 2023; Sulistiani & Fakhriah, 2023). However, in practice, the enforcement of this principle often faces challenges. Not infrequently, law enforcement officers immediately use a repressive approach, even though the perpetrators show good faith to settle their tax obligations. This raises questions about the effectiveness and consistency of the application of the ultimum remedium in dealing with tax crimes by legal entities. Not only does it have an impact on legal certainty, this kind of practice also minimizes the opportunity to recover maximum state losses.

The urgency of this research arises from the fact that the fiscal criminal law enforcement system in Indonesia has not fully favored the principles of fiscal justice and law enforcement efficiency. Often punishment is used as the main means without optimizing the potential for greater recovery of state losses through non-penal approaches. This is certainly not in line with the spirit of restorative justice that has now begun to be mainstreamed in various legal sectors, including in the realm of economic crimes.

On the other hand, existing academic studies tend to focus on dogmatic or descriptive analysis of tax legislation provisions, without exploring the effectiveness of the *ultimum remedium* as a fiscal recovery mechanism. The lack of literature examining the relationship between fiscal penal policies and their impact on the recovery of state losses is an important research gap to be filled (Jadidah, 2023; Kartanto et al., 2020; Rizal & Fakrulloh, 2022). In addition, there are no objective indicators available to measure the success of the application of this principle in the context of corporate criminalization in the tax sector.

Based on this background, this research aims to evaluate the application of the *ultimum remedium* principle in handling corporate tax crimes, assess its effectiveness as a means of recovering state losses, and offer a legal policy model that is more proportional between repressive and restorative aspects. It is expected that the results of this research can contribute to the strengthening of fiscal criminal regulations and the development of a legal approach that is oriented towards optimal state financial recovery.

This research is conducted with the spirit to answer academic and practical concerns regarding the effectiveness of the *ultimum remedium* principle in the context of corporate tax criminal law enforcement in Indonesia. The phenomenon of increasing tax crimes by corporate entities that are not always accompanied by the successful recovery of state losses shows a gap between normative idealism and implemented reality. Therefore, a systematic effort is needed to critically examine how the *ultimum remedium* principle is applied, to what extent this principle is able to answer the state's need for fiscal recovery, and what the legal implications are for strengthening the corporate punishment system.

The main objective of this research is to analyze and evaluate the application of the *ultimum remedium* principle in handling tax crimes committed by legal entities or corporations. This research also aims to examine the effectiveness of the principle as an instrument of state loss recovery, not merely as an avoidance of criminal penalties. Thus, this research not only highlights the normative aspects, but also examines the juridical and practical dynamics that occur in the law enforcement process against tax violations by corporations.

Furthermore, this research aims to formulate a more proportional and functional legal approach model, by integrating the *ultimum remedium* principle into a restorative and efficient law enforcement scheme. In this way, the research results are expected to contribute to the development of an economic criminal law framework that is oriented towards the recovery of state finances, increasing the voluntary compliance of corporate taxpayers, and strengthening the legitimacy of the national tax system as a whole,

Methods Research

This research uses a normative juridical approach enriched with empirical elements to gain a complete understanding of the application of the *ultimum remedium* principle in corporate tax crimes in Indonesia (Christiani, 2016; Robert & Zeckhauser, 2011). The normative approach is used to examine relevant laws and regulations, legal doctrines, and court decisions related to tax crimes by legal entities. On the other hand, an empirical approach is applied to explore how the principle is implemented in practice, as well as how law enforcers interpret and apply it in the case handling process.

This research is evaluative in nature, with the main focus on assessing the effectiveness of the *ultimum remedium* principle as a mechanism to recover state losses in tax criminal cases involving corporations. The data in this research comes from two main categories, namely primary data and secondary data. Primary data includes court decisions related to corporate taxation crimes decided in the last five years (2018-2023), as well as the results of interviews with a number of key informants such as tax prosecutors, investigators of the

Directorate General of Taxes, judges of special criminal courts, and academics in the field of economic criminal law. Meanwhile, secondary data were obtained from various laws and regulations, taxation and economic criminal law textbooks, relevant scientific journals, reports of government institutions such as DGT and BPK, and credible media publications.

Data collection was conducted through documentation studies and semi-structured interviews. The documentation study focused on analyzing legal documents and court decisions, while interviews were used to explore the perceptions and practical experiences of stakeholders in the tax law enforcement system. All data obtained were then analyzed qualitatively through content analysis and thematic analysis techniques. Content analysis was used to evaluate the normative content of regulations and judges' considerations in decisions, while thematic analysis was used to identify the main themes from the interviews, especially those related to obstacles, inconsistencies, and opportunities for applying the *ultimum remedium* principle.

The methods used in this research are organized systematically so that they can be replicated in similar studies in the future, especially in legal studies that focus on the effectiveness of criminal law enforcement in the economic and state financial sectors. With this approach, the research is expected to contribute both theoretically and practically in the development of a fairer and more functional tax criminal law system.

Results and Discussion

The results showed that the application of the *ultimum remedium* principle in handling corporate taxation crimes in Indonesia has not been implemented consistently and proportionally (Budi Saptono & Ayudia, 2020; Gunawan, 2023; Kusworo, 2023; Rizal & Fakrulloh, 2022). From the analysis of 25 court decisions in tax cases involving corporations during the 2018-2023 period, it was found that most cases were immediately processed through criminal channels even though the administrative mechanisms provided in the tax law system, such as objections, appeals, and voluntary restitution, had not been maximized. In fact, Article 44B of the Law on General Provisions and Tax Procedures (KUP Law) explicitly regulates that tax criminal cases can be terminated if state losses have been recovered before the investigation stage is completed.

This phenomenon reflects a narrow interpretation or even a mistake in the application of the *ultimum remedium* principle. In interviews with law enforcement officials, it was found that there are differences in views between tax investigators, prosecutors, and judges regarding the criteria for violations that should be qualified to be resolved through non-penal mechanisms. Some investigators consider that the return of state losses does not necessarily remove the criminal element, while some prosecutors and judges consider that good faith and restitution can be the basis for terminating the case or at least providing relief from sanctions. This difference in perception contributes to legal uncertainty and weakens the position of the *ultimum remedium* principle as a restorative and efficient legal solution (Adhari et al., 2024).

The interview results also show that the incentives for corporations to choose the administrative resolution route are often unclear or not strong enough. In some cases, the administrative resolution process actually takes longer and risks continuing to the criminal process, so the company chooses the litigation route even though it risks heavy penalties. This shows that there is no clarity and adequate legal protection for corporations that act in good faith in fulfilling their tax obligations.

On the other hand, in terms of the effectiveness of state loss recovery, it is found that the pure penal approach does not always provide optimal results. Of all the cases analyzed, only 8 out of 25 decisions (32%) contained explicit provisions regarding the obligation to pay state losses in full. Most of the decisions only imposed imprisonment and fines that were not

proportional to the value of the losses incurred. In some cases, state losses are not detailed in the verdict, and there is no follow-up mechanism to ensure that the recovery is carried out in reality.

These results confirm that a punishment system that is not integrated with fiscal recovery mechanisms is likely to fail to achieve the goals of restorative justice (Silalahi, 2025). Punishment without recovery will only burden the state with the costs of law enforcement and corrections, without providing solutions to the actual losses incurred (Santoso, 2022; Syaid, 2022). In fact, the modern legal approach, especially in economic crime, emphasizes the need for a recovery-oriented approach and not merely punishment.

In the perspective of modern criminal law theory, this is in line with the thoughts of Marc Ancel and Herbert Packer who prioritize a humanistic approach and the efficiency of the criminal justice system (Rohmy et al., 2022). *Ultimum remedium*, in this context, is not merely a principle of postponement of punishment, but as a legal strategy that places the effectiveness of state recovery as the main goal. This research also shows that countries such as the Netherlands and Germany have previously implemented a similar approach through fiscal settlement mechanisms, compliance-based investigations, and voluntary disclosure programs that allow corporations to avoid criminal proceedings on the condition of full recovery of losses (Kussainov et al., 2023; Tzankova & Kramer, 2021).

Thus, this discussion shows the urgent need to reform the fiscal criminal law enforcement framework in Indonesia to be more synchronized with the objectives of protecting state finances and law enforcement efficiency. Derivative regulations are needed that provide clear guidance on the stages and limits of applying the *ultimum remedium* principle, as well as integration between tax officials, prosecutors, and courts in one policy scheme oriented towards recovery and legal certainty.

Discussion

This research presents a significant scientific novelty in the discourse of corporate taxation criminal law, particularly in the context of the application of the *ultimum remedium* principle. So far, the principle has often been passively positioned as a normative justification for not directly using the criminal route. However, in this study, the *ultimum remedium* is reconceptualized into an active legal mechanism that can be functionally directed to optimize the recovery of state losses. This means that the application of the principle is not only interpreted as a "criminal delay", but as an integral part of a restorative justice-based fiscal policy strategy.

Another novelty arises from the analytical approach used in this research, which combines the doctrinal perspective of criminal law with empirical readings of court decisions and institutional practices of law enforcement officials. This research not only explains how the *ultimum remedium* norm is formulated in positive law, but also outlines how the norm is distorted or even overridden in practice, especially due to the lack of technical guidance and inter-agency coordination. By presenting the gap between norm and practice, this research provides a scientific basis for future fiscal criminal law policy reform.

In terms of theoretical contribution, this research provides a new approach to corporate criminal law in the field of taxation, namely by proposing a compliance-based restorative criminal policy approach model. This model emphasizes that the settlement of taxation cases should be more focused on restoring losses and restoring the state's fiscal, not on symbolic punishment. By integrating the concept of restorative justice, the principle of legal certainty, and fiscal effectiveness, this model offers a new perspective in formulating tax criminal law policies that are more adaptive to the needs of the state and the business community.

Practically, the results of this research have the potential to be adopted by policy makers, both within the Directorate General of Taxes, the Attorney General's Office, and legislative institutions authorized to formulate economic criminal policies. The resulting recommendations can be the basis for drafting technical regulations regarding the criteria and procedures for applying the *ultimum remedium* in corporate taxation cases. This is very important to reduce legal disparity, increase voluntary compliance, and provide legal certainty for cooperative businesses.

In addition, the contribution of this research also lies in strengthening the economic criminal law literature in Indonesia, which so far still tends to focus on conventional crimes or personal crimes. By making corporation as a legal subject that is critically examined in the context of criminal taxation, this research expands the scope and depth of national economic law studies. This research can also be used as an academic reference in the development of tax law curriculum and corporate criminal law in universities, as well as a basis for scientific arguments in the process of judicial review or reformulation of criminal fiscal policy by the Constitutional Court and legislators.

Furthermore, internationally, this contribution opens up opportunities to compare and adopt best practices from countries that have successfully developed a tax law enforcement system that balances the interests of the state and the protection of the business world. Thus, the results of this research can serve as an initial foundation in encouraging the harmonization of Indonesia's fiscal criminal policy with global economic law standards that are more fair, efficient, and progressive.

Conclusion

This research confirms that the *ultimum remedium* principle in handling corporate taxation crimes in Indonesia is still not optimally applied as a legal strategy that supports the recovery of state losses. Although normatively this principle has been recognized in the taxation legal system, particularly through Article 44B of KUP Law, its implementation at the practical level shows various inconsistencies and gaps. This is reflected in the large number of tax cases that are immediately processed criminally even though the administrative mechanism has not been thoroughly pursued, as well as the limited number of court decisions that lead to the return of real state losses.

The inconsistency among law enforcement officials - from investigators, prosecutors, to judges - in understanding and applying the *ultimum remedium* principle has created significant legal uncertainty. Not only does it affect the effectiveness of law enforcement, this condition also harms businesses that have good faith in fulfilling tax obligations. Corporate criminalization that is carried out quickly without first prioritizing administrative and restorative approaches can reduce trust in the tax system and have a domino effect on fiscal stability and investment.

This research also shows that a penal orientation that is not integrated with fiscal recovery mechanisms has the potential to make the state fail to achieve its main goal, namely the recovery of public finances. In many cases, imprisonment and fines are not accompanied by the obligation to return losses in real terms, so that the legal system creates additional social costs without substantial fiscal solutions. Therefore, it is necessary to reorient the *ultimum remedium* principle so that it is not only positioned as a criminal avoidance, but as a strategic tool to encourage fair and beneficial settlements for the state.

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