



# Criminal Law Policy In The Application of Restorative Justice Principles In Tax Criminal Investigations

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**Abstract:** Tax law is a powerful tool to force taxpayers to comply with their tax obligations. This research uses descriptive analysis that describes the applicable laws and regulations related to criminal law policies in the application of the principle of restorative justice in tax criminal investigations. The purpose of tax audit is as a law enforcement effort by the Directorate General of Taxes (DGT) against taxpayers in carrying out tax obligations, which is based on the ultimum remedium principle that prioritizes administrative sanctions before criminal sanctions. It is expected that the tax education initiative will be able to improve the quality and effectiveness of tax education activities.

**Keywords:** Taxation, Restorative Justice, Tax Compliance

## Introduction

Criminal Law Policy is All of a country's laws that define what behaviors are illegal and constitute crimes, as well as the punishments given to offenders in an effort to prevent crime (Saleh, 2021).

Understanding law means understanding human beings. The main purpose of law is to provide order and security to groups of people. According to Soerjono Soekanto, the main purpose of law enforcement is to balance the values expressed in final attitudes and stable regulations in order to build, maintain, and protect harmonious social relations in society (Pradoto et al., 2020).

In the context of taxation, according to Article 1 number 1 of Law No. 28 of 2007 concerning the Third Amendment to Law No. 6 of 1983 concerning General Provisions and Procedures for Taxation (Law No. 28 of 2007 concerning General Provisions and Procedures for Taxation) "Taxes are mandatory contributions to the state owed by individuals that are compelling based on law by not getting direct rewards and are used for state purposes for the greatest prosperity of the people." In this case, tax is defined as an obligation that must be fulfilled by the payment of income from each taxpayer to the state or state treasury in order to fulfill all needs and efforts to fulfill the interests of the state and society, so it is very forceful in nature (Shelemo, 2023).

As the main source of state revenue, the realization of tax revenue shows a positive trend. Data from the Ministry of Finance in 2024, the realization of tax revenue reached IDR 2,247.5 trillion or 80.2% of the 2024 State Budget target, an increase of 0.3% compared to the 2023 period which reached (IDR 1,869.2 trillion) and in the 2022 period which reached (IDR 1,716.8 trillion), until October 31, 2024 tax revenue reached IDR 1,517.53 trillion or 76.3% of the target. This tax revenue has continued to improve in the last four months. Non-oil and gas income tax improved due to an increase in gross receipts from the mining sector and a decrease in restitution. PBB and other taxes improved due to an increase in oil and gas PBB payments. VAT and STLG growth was good in line with the maintenance of domestic consumption from both domestic and imports. Meanwhile, oil and gas income tax still contracted due to the decline in oil lifting (Kemenkeu, 2024).

Today's tax collection system has undergone significant changes, changes that can be seen from the tax collection system that was originally active tax officers billing taxes to taxpayers through the issuance of tax assessments (Official Assessment System) to a tax collection system based on the activeness of taxpayers or taxpayers themselves in calculating, and reporting the amount of tax to be paid (Self Assessment System) (Sarwirini, 2014).

The success or failure of the implementation of the self-assessment tax collection system certainly depends on the knowledge and understanding of the community, especially taxpayers of the substance of tax legislation related to the Self-Assessment System. After 30 (thirty) years of tax law reform in Indonesia, an increase in taxpayers' understanding of the self-assessment system is certainly predicted to greatly increase state revenues obtained from the tax sector (Sarwirini, 2014).

In this case, the role of the community in fulfilling their tax obligations needs to be continuously improved by increasing knowledge, understanding, and appreciation that taxes are the main source of funding for government and national development and that every member of the community must actively participate in fulfilling their respective tax obligations. But in reality, not all taxpayers fulfill their tax obligations in accordance with tax regulations (Dempsey, 2024).

To ensure the recovery of state revenue losses, the taxation sector encourages settlement through peaceful legal remedies (restorative justice) by prioritizing the ultimum remedium principle, which states that criminal law settlement is the last resort after administrative sanctions are ineffective (Globalisasi et al., 2024). This approach has the potential to boost state revenue if the suspect or defendant in a tax criminal case is willing to pay the cost of terminating the investigation or prosecution, in order to improve people's welfare. The ultimum remedium principle is reflected in the provision of tax payment/payment accompanied by the imposition of administrative sanctions that can stop a stage both in investigation, prosecution, and court hearing examination. That the ultimum remedium principle encourages settlement through peaceful legal remedies (restorative justice) (Schiavo, 2022).

According to restorative justice advocates John Braithwaite, Howard Zehr, and Mark Umbreit, restorative justice aims to end punishment for wrongdoing by holding offenders accountable and involving victims and communities. This approach includes apologies,

redress, admissions of guilt, and efforts to reintegrate the offender into society. The ultimate goal is to heal, restore, reconcile and reintegrate all parties involved (Wulandari, 2021).

Satjipto Rahardjo identified that the lengthy procedures of the Criminal Justice System in resolving cases through litigation led to the accumulation of cases (Rahardjo, 2003). This condition encourages the emergence of a restorative justice approach as a new paradigm in handling tax crimes, which has been prioritizing a retributive approach through conventional criminal law enforcement (de Andrade, 2023).

In order to encourage sustainable economic growth and help accelerate economic recovery due to the Covid-19 pandemic, Law Number 7 of 2021 concerning Harmonization of Tax Regulations has been passed. The law has undergone several additions and changes to articles with the aim of improving the quality of tax law enforcement officers in the field of taxation. In addition, Law Number 7 of 2021 can also increase the ability of taxpayers to pay off their tax debts and obtain administrative sanctions for the termination of tax crime investigations (SHELEMO, 2023).

The first step in the criminal law enforcement process or criminal justice system mechanism is investigation. In determining the success or failure of the criminal law enforcement process, investigation plays a crucial and strategic role. The tax crime investigation process involves a number of steps taken by the investigator in accordance with legal procedures to find the suspect and collect evidence that can clarify the tax crime that occurred (Fitrah et al., 2021). This investigation is a follow-up to the preliminary evidence examination process.

In Article 44 paragraph (2) letter D: "Termination of investigation for the sake of law is the reason for the elimination of the right to prosecute and the loss of the right to carry out punishment, among others because the same case cannot be tried a second time (*nebis in idem*), the suspect dies, or due to expiration as referred to in article 40". In Article 44 B paragraph (1): "In the interest of state revenue, at the request of the Minister of Finance, the Attorney General may stop the investigation of Taxation Crimes as long as the criminal case has not been submitted to the court"(SHELEMO, 2023). Thus, the termination of the investigation can occur when the case is still at the investigation level or at the public prosecution stage and has not yet been submitted to the Court (Ehjelah, 2023).

## Methodology

A research method is a comprehensive way or strategy to find or obtain the necessary data. This research uses a normative juridical approach method, through a statute approach, namely by analyzing and reviewing laws and regulations related to the problem under study, or approaches using legislation and regulations.

This research uses descriptive analysis that describes the applicable laws and regulations related to criminal law policies in the application of restorative justice principles in tax criminal investigations. The sources of legal materials used are sourced from library research in the form of secondary legal materials, using some literature in the form of books, scientific works, the internet and legal journals (Levine, 2023).

## Result and Discussion

### 1. Criminal Law Policy in the Application of Restorative Justice Principles in Tax Crime Investigation

By continuously raising awareness, understanding, and appreciation of the fact that taxes are the main source of state funding and national development and that every member of society should actively participate in fulfilling his or her own tax obligations, society contributes to the fulfillment of taxation-related obligations. However, in reality, not everyone is obligated to fulfill their taxation responsibilities in accordance with the tax law.

Criminal Law Policy is All of a country's laws that define what behaviors are illegal and constitute crimes, as well as the punishments given to offenders in an effort to prevent crime (Saleh, 2021).

Not only can tax officials face criminal penalties for their actions, such as embezzling tax money, but they can also be held liable for tax administration crimes. According to the Tax Crimes Act, this can result in criminal penalties (Tunç, 2022).

Crime or strafbaarfeit are some of the terms used to describe an act that is prohibited under criminal law. According to the Criminal Code, human beings were previously limited to victims of crime. Nonetheless, throughout its development, there have been businesses or trading groups comparable to humans with the capacity to commit crimes. Of course, unlawful conduct i.e., conduct that meets the legal definition of a crime can be covered by criminal law. This behavior can be either action or inaction (Virginia & Soponyono, 2021).

Crime is characterized by the fact that, in addition to breaking the law, it also negatively affects society by undermining or contradicting the establishment of a just and moral order. Crime is antisocial behavior. If a person's actions are defined in law, they are considered illegal. In other words, the legal formulation must be examined to determine whether the act is prohibited or not.

The notion of legality states that no act is inherently prohibited or subject to criminal punishment if it is not predetermined by law. "There is no crime without a prior regulation; no one can be punished without a regulation that precedes the act and that the regulation in question must include the threat of punishment." This is the Latin phrase for the principle of legality, i.e. *nullum delictum nulla poena sine praevia lege poenali*. This is a fundamental principle in criminal law. Legal certainty is the goal of this concept of legality. The concept of legality is charged with two functions: a protective function, which states that there is no punishment other than that imposed by law, and an instrumental function, which states that no illegal act goes unpunished (Hradecká, 2022).

The purpose of "criminal punishment" against the perpetrator of a criminal offense is to try to dissuade potential perpetrators from acting. Therefore, the existence of an act that is in accordance with the formulation of the law and violates the law is an element of this criminal offense. This unlawfulness goes beyond formal law and includes material law.

Law Number 7 of 2021 concerning Taxation, regulates Criminal Law Policy by applying the Principle of Restorative Justice in the Investigation of Crimes in the Field of Taxation. Restorative justice aims to end punishment for wrongdoing by holding offenders accountable and involving victims and communities. This approach includes apologies, compensation, admission of guilt, and efforts to reintegrate the offender into society. The

ultimate goal is to heal, restore, reconcile and reintegrate all parties involved (Wulandari, 2021).

The lengthy procedure of the Criminal Justice System in resolving cases through litigation causes a buildup of cases (Rahardjo, 2003). This condition encourages the emergence of a restorative justice approach as a new paradigm in handling tax crimes, which has been prioritizing a retributive approach through conventional criminal law enforcement.

The criminal law policy strategy in the investigation of tax crimes with the concept of restorative justice is in accordance with the concept of criminalization, that criminal sanctions are *Ultimum Remedium*. This means that administrative sanctions are prioritized in the context of law enforcement of tax law violations, and criminal sanctions are applied if administrative efforts are no longer effective in complying with tax provisions by taxpayers.

The concept of *Ultimum remidum* in tax crimes has been applied in the tax amnesty policy by the government, by eliminating taxes that should be owed and freeing taxpayers from criminal sanctions and tax administration by disclosing assets and paying ransom, in taxation. This policy is expected to increase tax revenue. Unfortunately, this policy is part of the *ius constituendum*, or desired legislation, so it is currently important to consider evaluating all government policies relating to illegal behavior in the field of taxation.

The *ultimum remedium* concept is strengthened by the development of criminal law, especially the pattern of punishment and restorative justice. Based on the *ultimum remedium* principle, criminal law settlement is the last resort. Therefore, a prudent and mutually beneficial settlement approach is needed, such as the taxation sector that supports settlement through non-violent legal channels to ensure the recovery of state revenue losses (Pujiyono & Dwi Sutanti, 2019).

Restorative justice in tax crimes is now implemented through the completion of investigations, in accordance with Law Number 7 of 2021 concerning Harmonization of Tax Provisions. At the request of the Minister of Finance, the Attorney General may stop the investigation of tax crimes in the interest of state revenue in accordance with Article 44B no later than six months from the date of the request letter (SHELEMO, 2023).

"If in the process of investigation more than 1 (one) person or entity has been determined as a suspect, then each suspect has the right to also submit a request for termination of investigation for himself", reads Article 44 B paragraph (2) of Law Number 7 of 2021 concerning Harmonization of Tax Provisions. After the suspect has paid off the amount of loss of state revenue, the amount of tax that is not or underpaid, the amount of tax in the tax invoice, the amount of restitution, compensation, or tax credit requested, and administrative sanctions in the form of fines that have been imposed up to the investigation stage, the suspect submits a request for termination of investigation.

One of the efforts to "save" state funds is to control criminal investigations in the revenue domain. Considering that it takes a lot of time, energy, and money to prove and resolve criminal proceedings in the tax domain. Criminal sanctions for tax-related offenses have become more severe, although they often do not have a deterrent effect. The concepts of restorative justice and *ultimum remedium* have been used in this situation as they



prioritize state funds over conducting investigations, which may result in taxpayers being penalized.

## **2. Efforts to Make Taxpayers Comply in Paying Their Tax Obligations**

Taxpayers who are unaware of their tax obligations or who are aware of them but decide not to complete them because they believe there is no harm involved are examples of taxpayer non-compliance. Since many taxpayers are unaware of tax advantages, it is difficult to increase their understanding of the importance of taxes, the “deterrent effect” can be used to increase taxpayer compliance through teaching and supervision, or by law enforcement in the form of inspections (Sari et al., 2022).

In charge of collecting taxes for the state is the Directorate General of Taxes. By adhering to the Tax Law and its implementing regulations, the Directorate General of Taxes upholds legality and accountability in carrying out its duties. The Directorate General of Taxes conducts fair law enforcement through audits and efficient supervision and guidance duties in an effort to improve tax compliance.

Education is the process of providing information and skills to an individual or a group of individuals through learning so that they can perform the tasks that educators expect of them, from ignorance to knowledge.

The Tax Counselor functional group is primarily responsible for tax education. Through various media, educational activities are conducted both directly and indirectly. It is expected that tax education initiatives will be able to improve taxpayers' knowledge of their tax responsibilities and help them understand them better. Taxpayer compliance is strongly influenced by tax socialization. Tax education encourages taxpayers to comply with laws and regulations and fulfill their duties (Anwar Syadat et al., 2022).

Article 1 point 1 of PER-12/2021 states that tax education is every effort and procedure aimed at improving the physical, spiritual, moral, and intellectual abilities of the community in order to form high tax-conscious behavior, better tax knowledge and skills, and better tax compliance. This is done by encouraging taxpayers to understand, be able, realize, care, and participate in the implementation of tax rights and obligations through behavior change.

Tax education is an effort to provide knowledge and skills to taxpayers about their tax rights and provisions. Tax education is carried out in various forms and methods and with certain objectives. Tax education based on the method used:

### *1) Hands-On Education*

- a) Active Direct Education, is a form of education conducted directly with taxpayers either through face-to-face or online through virtual forums. The Tax Office will develop an education activity plan based on the needs of taxpayers. Active direct education can be in the form of tax classes, seminars, workshops, or One on One education. One on One education is a form of providing tax information more intensively to taxpayers with certain risk levels and criteria.
- b) Passive Direct Education, is a form of providing information to taxpayers through consultation channels both in the form of helpdesk at the Integrated Service Center (TPT) and online consultation services through live chat. Taxpayers who need

explanation and information can directly contact the Tax Office and consult, without having to wait for invitations to tax classes or other educational activities.

2) *Indirect Education*

- a) One-way Indirect Education, is an activity of providing tax information to the general public, especially taxpayers indirectly through print media, electronic media and social media without direct interaction with the education target. One-way indirect education is often conducted in the form of press releases, taxation articles, podcasts, video tutorials and others.
- b) Two-way Indirect Education, is an activity of providing tax information to the general public, especially taxpayers with direct interaction. Two-way indirect education is conducted in the form of radio talk shows and live broadcasts on social media.

Educational activities are carried out with several objectives, namely:

1) *Increasing Tax Awareness*

This educational activity aims to raise awareness about the importance of taxes to the wider community. The target of this activity is prospective taxpayers, both students, students and the general public. This tax awareness needs to be fostered from an early age, therefore the Directorate General of Taxes collaborates with educational institutions to organize education on the importance of taxes for the country. This education is carried out in the form of Tax Talks, Tax Goes To School, Tax Goes To Campus and others.

2) *Tax Knowledge Improvement*

The purpose of tax education is also to increase tax knowledge. The target of this education activity is taxpayers. Tax provisions that continue to change in line with economic development need to be informed to taxpayers, so that taxpayers become aware and able to fulfill their obligations in accordance with applicable regulations. Many educational activities with the theme of increasing tax knowledge are carried out in the form of tax classes, seminars, workshops and indirect educational activities through various media.

3) *Improved Tax Compliance*

The theme of tax compliance improvement education is conducted to taxpayers with certain criteria and risk levels. Taxpayers who are considered not fully compliant and correct in fulfilling their obligations are given more intensive education and understanding. Through this education, it is expected that there will be a change in Taxpayer behavior, from non-compliant to compliant in fulfilling their obligations. Educational activities with this theme are conducted in the form of tax classes and One on One education.

Tax Instructors take responsibility for the implementation of tax education, which was previously mostly carried out by Account Representatives. Tax Instructors have been equipped with the necessary education and training, so that they have adequate competence in organizing education. Tax Instructors also have a communication network and knowledge management system that supports the implementation of their duties to provide the latest tax information to the public, especially taxpayers. With the existence of Tax Instructors, it is expected to improve the quality and effectiveness of tax education activities at the Directorate General of Taxes.

Setting performance standards with planning objectives, designing information feedback mechanisms, comparing actual performance with the set standards, identifying deviations, and assessing the significance of those deviations are all part of the methodical process of supervision. In addition to carefully examining something and reporting its findings, supervision also includes improvement and reorganization to meet pre-determined objectives.

According to Circular Letter of the Director General of Taxes Number SE-49/PJ/2016, taxpayer supervision is a series of data research activities to monitor the results of research in order to assess tax potential, monitor compliance with tax obligations, and boost tax revenue in accordance with the provisions of laws and regulations in the field of taxation. In the field of taxation, supervision includes both intensification and extensification. The purpose of intensification is to maximally utilize what already exists, namely increasing tax revenue without creating new tax objects. Extensification is the process of adding tax objects, which is an effort to increase tax revenue by introducing tax objects that did not exist before. ARs, the tax officers at the Tax Office, are responsible for monitoring this type of tax. They oversee the administrative system and are in charge of serving and closely monitoring taxpayers.

Account Representatives (ARs) conduct tax supervision by analyzing tax data that does not comply with the law and clarifying research findings. Taxpayers still have the opportunity to clarify unclear tax liabilities and correct tax liabilities that were not properly completed at this monitoring stage. It is hoped that by conducting monitoring activities, taxpayers will realize their duties that have not been fully fulfilled and learn lessons that will help them fulfill their commitments more effectively in the future. Such tax monitoring encourages more taxpayers to fulfill their responsibilities.

Tax supervision is carried out by the Account Representative (AR) through clarification of the results of research and analysis of tax data that is not in accordance with the provisions. At this stage of supervision, taxpayers are still given the right to provide clarification and make corrections to tax obligations that have not been fulfilled correctly. Through supervision activities, it is expected that taxpayers know their obligations that have not been fully fulfilled correctly, as well as being a lesson for taxpayers to improve the fulfillment of their obligations correctly in the future. That tax supervision encourages the improvement of the fulfillment of obligations by taxpayers.

The last effort if the taxpayer remains non-compliant despite education and supervision, the Directorate General of Taxes will carry out the law enforcement function. In the audit process, the taxpayer will be 'forced' to comply with the applicable tax provisions by issuing legal products that must be implemented starting from the issuance of Tax Assessment Letters to active tax collection activities. Tax audits have a positive effect on taxpayer compliance.

Article 1 paragraph (25) of Law No. 28 of 2007 states that a tax audit is a set of procedures to gather and analyze data, information, and/or evidence in a professional and objective manner using audit standards in order to verify that tax obligations have been



fulfilled and/or for other purposes in the context of putting tax laws and regulations into effect. The audit's goal is to verify that tax obligations are being fulfilled.

Tax audits are carried out to provide a deterrent effect on non-compliant taxpayers so that they do not repeat the same actions in the future. Although tax collection adheres to a self-assessment system, in the context of guidance, research and supervision of the implementation of tax obligations of taxpayers, the Directorate General of Taxes can still issue tax assessments. This tax assessment is a component of official assessment. The importance of tax audits is related to changes in the tax collection system since the 1983 Tax Reform, from an official assessment system where the government (tax authorities) plays an active role in registering, collecting, and reporting taxes, to a self-assessment system where taxpayers are given the trust to play an active role in carrying out their tax obligations.

The means to report the amount of taxable income and the amount of tax payable is the Tax Return (SPT). In other words, SPT is also a taxpayer accountability tool for the implementation of tax obligations in accordance with tax regulations. The amount of tax reported in the tax return becomes the object of audit. The audit is conducted on the SPT to ensure that the amount of tax reported is in accordance with what should be paid and reported. So it can be formulated that the purpose of tax audit is as a law enforcement effort by DGT against taxpayers in carrying out tax obligations. Tax audit is a powerful tool to force taxpayers to comply with their tax obligations.

## Conclusion

Criminal law policy in taxation emphasizes the importance of applying the ultimum remedium principle that prioritizes administrative sanctions before criminal sanctions. Restorative justice in tax investigations, as stipulated in Law Number 7 of 2021, provides room for termination of investigations after taxpayers fulfill their tax obligations, with the aim of recovering state revenue efficiently without having to go through a lengthy criminal process.

Improving taxpayer compliance can be done through effective tax education, which includes various methods both direct and indirect. Monitoring is also important to ensure taxpayers fulfill their obligations. If education and supervision are ineffective, then law enforcement through tax audits becomes the last step to encourage taxpayer compliance and increase state revenue.

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