

Harmonization of Tax Criminal Law Enforcement with the New Criminal Code (KUHP): A Restorative Justice Perspective

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ABSTRACT: This study examines harmonizing tax criminal law enforcement with applying restorative justice within Indonesia's new Criminal Code (KUHP) framework. This reform introduces a new paradigm in criminal law enforcement, focusing on restorative approaches to address tax crimes such as tax evasion, tax avoidance, and aggressive tax planning. This approach aligns with the primary objectives of tax criminal law, namely the recovery of state finances and the deterrent effect, without relying on imprisonment as a primary measure. The main issue addressed in this research is how harmonizing the criminal provisions in the KUHP and the tax provisions in the General Taxation Provisions and Procedures Law (KUP Law) can create a more effective and inclusive system for enforcing tax criminal law. The research question is: How can applying restorative justice within Indonesia's harmonized handling of tax crimes enhance taxpayer compliance and expedite the recovery of state finances? The novelty of this research lies in integrating restorative justice principles into the harmonization of tax criminal law. This area has not been extensively explored, particularly concerning implementing the new KUHP. The methodology used is a juridical normative approach, supplemented by a comparative analysis of international practices that have successfully implemented restorative justice in tax enforcement. The study finds that harmonizing restorative approaches with criminal law provisions can improve tax compliance, reduce litigation burdens, and offer more effective solutions for financial recovery. Therefore, applying restorative justice to tax crimes could be a crucial step in the legal reform process in Indonesia.

Keywords: Criminal Code, Harmonization, Legal Reform, Restorative Justice, Tax Compliance, Tax Crimes.



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INTRODUCTION

The criminal law reform in Indonesia has entered a new phase by enacting the Criminal Code (Kitab Undang-Undang Hukum Pidana, KUHP) through Law No. 1 of 2023. This reform reflects the state's efforts to establish a criminal justice system more responsive to modern society's

evolving social, economic, and cultural dynamics (Tornado, 2022). A key aspect of the new Criminal Code is the recognition of restorative justice in addressing criminal offenses. This approach aims to repair harm, restore social relationships, and create a more inclusive justice for victims, offenders, and society, or in Latin, "*restauratio iustitiae*". In this context, the relevance of restorative justice becomes increasingly evident, particularly in handling tax crimes, which often involve state losses and taxpayer compliance issues (Manullang & Citra Ramadhan, 2023).

Tax law has unique characteristics within the criminal law realm. Based on Law No. 7 of 2021 on Tax Harmonization, particularly the provisions concerning General Provisions and Tax Procedures (KUP Law), tax crimes are often related to administrative violations that result in state losses. Cases of tax evasion, tax avoidance, and tax document manipulation have become significant challenges in ensuring the sustainability of state revenue (Moenek, 2020). However, resolving tax criminal cases through traditional retributive approaches, such as imprisonment ("*poena*"), is often deemed ineffective in improving taxpayer compliance and restoring state losses optimally. Restorative justice, which emphasizes the recovery of losses through dialogue, mediation, and agreements between offenders and tax authorities, becomes a viable alternative to consider (Anggia et al., 2023).

In the modern era, taxation is not only an economic tool but also a pillar of national development sustainability (Duan et al., 2024). The complexity of the global tax system, economic digitalization, and changing business models have created new challenges for tax authorities. The use of advanced technology by tax criminals often complicates law enforcement (Rosid & Romadhaniah, 2023). Applying restorative justice in tax criminal law becomes even more relevant in this context. This approach prioritizes the recovery of state losses and allows offenders to correct their wrongdoings without going through lengthy and costly criminal proceedings, or in legal terms, "*decriminalization*."

However, implementing restorative justice in tax criminal cases raises critical questions. Can this approach be integrated with the principles outlined in the KUP Law and the new Criminal Code? To what extent can its application meet legal objectives, namely justice (*iustitia*), legal certainty (*certitudo juris*), and utility (*utilitates*)? Most importantly, how does it support the broader legal reform agenda in Indonesia?

Table 1. Performance of Preliminary Evidence Examination, 2023

Description	Total
A. Beginning Outstanding Cases	511 letters
B. Issuance of Preliminary Evidence Examination Order (SPPBP)	707 letters
C. Completion:	
- Recommendation for Investigation	308 reports
- Article 8 paragraph (3) of the General Tax Provisions Law (UU KUP)	288 reports
- Termination of Preliminary Evidence Examination	23 reports
Total Completed Cases	619
D. Cancellation of SPPBP	6 letters
E. Ending Outstanding Cases (A+B-C-D)	593 letters
Revenue from Law Enforcement PKM Activities	IDR 4.22 trillion

Source: Directorate General of Taxes Annual Report, 2024

Table 2. Investigation Performance, 2023

Description	Amount
Issuance of Investigation Order	214 letters
Investigation Resolutions:	
Article 8 paragraph (3) of the General Tax Provisions and Procedures Law (UU KUP)	44 taxpayers
Case files declared complete by the Prosecutor's Office (P-21) and equated cases:	
- Tax Crime (TPP)	82 cases
- Money Laundering (TPPU)	3 cases
- Corporate cases	4 cases
- Article 44B of the General Tax Provisions and Procedures Law (UU KUP)	23 cases
Loss to state revenue	Rp766.42 billion
Cases already sentenced:	
Defendant has been convicted	39 cases
Loss to state revenue	Rp770.49 billion
Criminal fines	Rp1.54 trillion
Asset Confiscation	
Number of asset confiscation activities	51 activities
Value of confiscated assets	Rp486.38 billion

Source: Directorate General of Taxes Annual Report, 2024

Table 3. Modus Operandi of Tax Crimes, 2023

Description	Number of Cases
Issuing and/or using tax invoices not based on actual transactions	29
Submitting incorrect tax returns (SPT)	38
Failing to remit withheld taxes	11
Failing to submit tax returns (SPT)	29
Money laundering and corporate tax crimes	3
Failure to register for a Taxpayer Identification Number (NPWP) / Taxable Entrepreneur (PKP) status and misuse of NPWP/PKP	2
Total	112

Notes: For the first time in the history of Indonesian taxation, in 2023, the Directorate General of Taxes (DJP) conducted an in-absentia investigation, or without the presence of the suspect, based on the provisions of Article 44D of the General Tax Provisions and Procedures Law (UU KUP) and Article 61 of Government Regulation No. 50 of 2022.

Source: Directorate General of Taxes Annual Report, 2024

In recent decades, challenges in tax law enforcement have not only involved tax avoidance and tax evasion but also the increasing aggressiveness of tax planning and the complexities arising from the digital economy transformation (Meiryani & Warganegara, 2024). This situation demands a new approach that can balance taxpayer compliance and law enforcement's efficiency. In this

context, applying restorative justice principles becomes an increasingly relevant solution. This approach offers a more inclusive and just mechanism and can enhance voluntary compliance and reduce the litigation burden within the tax system (Tenreng et al., 2021).

This study arises from the urgency to address the fundamental problem of how the principle of restorative justice can be effectively integrated into tax policies to increase tax compliance, reduce litigation burdens, and support national economic recovery (Zahra et al., 2023). This research focuses on theoretical analysis and the development of an applicable framework for various scenarios, such as post-pandemic tax reform, digital tax systems, and tax amnesty (*"tax amnesty"*) programs.

Based on this background, the objectives of this research are as follows:

1. To analyze the concept of the restorative justice approach in criminal law, with a focus on its application in handling tax crimes according to the recent changes in the Criminal Code.
2. To assess the relevance and implementation of restorative justice in handling tax crimes in Indonesia, specifically concerning tax avoidance, tax evasion, and aggressive tax planning, in the context of harmonizing with the provisions of the new Criminal Code.
3. To identify the strengths and weaknesses of applying the restorative justice approach in enforcing tax criminal law in Indonesia, considering its impact on the effectiveness of the criminal justice system and the recovery of state losses.

This research is important because it offers an innovative contribution in the form of a restorative justice-based framework that can address various challenges in Indonesia's tax system (Sarjana & Adrison, 2024). Thus, this research is academically relevant and has practical implications for policymakers, especially in realizing a more inclusive, efficient, and just tax system.

In addition to providing theoretical contributions, this research also has practical implications. The findings are expected to serve as a reference for policymakers, tax authorities, and legal practitioners in designing tax criminal law enforcement strategies that are not only effective but also adaptive to the needs of the globalization era and economic digitalization (Kobbi-Fakhfakh & Athie, 2023). Therefore, this research is relevant not only in the context of national criminal law but also within the broader framework of legal reform in Indonesia (Cahyadini et al., 2023).

METHOD

This research uses a juridical normative method combined with a comparative approach to analyze the relevance and effectiveness of applying restorative justice in handling tax criminal cases in Indonesia. The juridical normative approach involves studying the legal norms contained in the Criminal Code (Kitab Undang-Undang Hukum Pidana, KUHP – Law No. 1 of 2023) and the KUP Law. Meanwhile, the comparative approach is used to compare the application of restorative justice in various international jurisdictions that have successfully implemented this approach in the field of taxation to acquire "best practices" that can be applied in Indonesia (Riyadi & Prasetyo, 2021).

The research design includes three main dimensions. First, a conceptual analysis focusing on the principles of restorative justice and its connection to criminal law reform in Indonesia. Second, a legal review of the normative provisions in the KUHP and KUP Law relevant to the application of restorative justice and its connection to the taxation legal system in Indonesia (Hussain et al., 2022). Third, a case study and benchmarking with countries such as New Zealand, Australia, and the United Kingdom, have integrated restorative justice into their tax law enforcement (Mitchell, 2020).

The target population for this research consists of two main groups. First are primary legal sources, including the KUHP and KUP Law provisions. Second, secondary legal sources, such as legal literature, journal articles, and research reports discuss the application of restorative justice in the context of criminal law and taxation (Wibowo et al., 2023). This study employs purposive sampling to select relevant legal sources and empirical data, focusing on jurisdictions that have a proven implementation of restorative justice (case law).

Data collection is carried out through two main methods. Primary data is obtained from the analysis of legal provisions in the KUHP and KUP Law, particularly those related to restorative justice and tax crimes (Yogama et al., 2024). Secondary data includes journals, books, and international reports that provide insights into applying restorative justice in the context of taxation. Data collection is systematically conducted through legal document reviews and international case studies, to provide a strong foundation for further analysis (Pascoe, 2023).

Data analysis uses content analysis to identify legal norms that support or hinder the application of restorative justice in tax criminal law. Additionally, the comparative analysis approach is used to examine best practices from relevant international jurisdictions, to identify the potential for applying restorative justice in Indonesia (Hanafi et al., 2024). This approach is also complemented by descriptive analysis of tax compliance data and trends in tax violations in Indonesia, providing an empirical perspective on the relevance of restorative justice in reducing tax evasion and improving tax compliance.

This methodology is chosen because it provides a comprehensive analysis of the legal framework in Indonesia while offering practical insights from international experiences. The combination of juridical normative and comparative approaches allows the study to produce findings that are theoretically relevant and practically beneficial for policymakers, tax authorities, and legal practitioners. Although there are limitations, such as the availability of specific case studies in Indonesia, this approach is deemed sufficient to explore the potential integration of restorative justice into Indonesia's tax criminal law system, aiming to create a more just (*justum*) and efficient (*efficax*) tax system (Anser et al., 2023).

Below is the novelty of this research compared to previous studies:

Table 4. Novelty

Research Aspect	(Author, Year)	Theme / Topic	Previous Findings	Research	Novelty
Tax Technology and Online Systems	(Santi et al., 2020)	"The Impact of Tax Compliance Costs on Online Tax System Implementation"	Explores how tax compliance costs influence the adoption of online tax systems in Indonesia.		Analyzes how online tax systems improve the efficiency of restorative justice in resolving tax disputes.
Tax Reform and Justice	(Ispriyarso & Wibawa, 2023)	"Post-Pandemic Tax Reform in Indonesia"	Discusses the impact of tax reform policies during and after the COVID-19 pandemic in Indonesia.		Examines how restorative justice principles align with tax reform policies to achieve fiscal recovery.
Tax Compliance during Crisis	(Amah et al., 2021)	"Factors Affecting Tax Compliance During the COVID-19 Crisis"	Identifies moral and sanction-based factors influencing tax compliance during a crisis.		Integrates restorative justice approaches to enhance taxpayer compliance through non-punitive measures.
Fiscal Incentives for MSMEs	(Hartono et al., 2023)	"Effectiveness of Tax Incentives for MSME Recovery Post-Pandemic"	Evaluates the role of fiscal incentives in supporting MSMEs' recovery after the pandemic.		Explores how fiscal incentives can be aligned with restorative justice principles to prevent tax evasion cases.
Tax Amnesty and Aggressiveness	(Khan & Nuryanah, 2023)	"Tax Aggressiveness and Effectiveness of Tax Amnesty Programs"	Evaluates the impact of tax amnesty programs in reducing aggressive tax planning strategies.		Develops a restorative justice framework to sustain the positive effects of tax amnesty programs.
Low Carbon Fiscal Policy	(Nurfatriani et al., 2022)	"Fiscal Governance for Low Carbon Development in Indonesia"	Discusses fiscal governance strategies for sustainable low-carbon economic development.		Applies restorative justice concepts to tax violations within the framework of sustainable fiscal governance.
MSMEs' Tax Compliance and Technology	(Prawati et al., 2023)	"Technology Adoption and Tax Compliance in Indonesian MSMEs"	Analyzes factors driving technology adoption among MSMEs for tax compliance.		Evaluates how technology adoption supports restorative justice approaches in resolving tax disputes.
Digital Economy and Tax Avoidance	(Butarbutar, 2022)	"Base Erosion and Profit Shifting in the Digital Economy"	Explores BEPS practices by digital companies and their tax implications.		Proposes restorative justice measures to address tax violations in the digital economy.
Tax Law Enforcement Effectiveness	(Rosid & Romadhaniah, 2023)	"Effectiveness of Tax Law Enforcement in Indonesia: An Empirical Study"	Analyzes empirical evidence on the effectiveness of tax law enforcement mechanisms in Indonesia.		Highlights how restorative justice can enhance taxpayer compliance by reducing reliance on punitive measures.
Restorative Justice in Fiscal Policy	(Widyastuti et al., 2024)	"Restorative Justice in Tax Dispute Settlements"	Discusses the potential of restorative justice in reducing litigation in tax disputes.		Proposes a comprehensive restorative justice framework tailored for Indonesia's fiscal and legal landscape.

Source: Data processed by the author, 2025

RESULT AND DISCUSSION

A. Regulations in the New Criminal Code (UU No. 1 of 2023)

Indonesia has signed and ratified the new Criminal Code (Kitab Undang-Undang Hukum Pidana, KUHP), replacing the old Criminal Code, which had been in effect since the colonial era. The long journey leading to the ratification of the new KUHP as law is a significant achievement, considering the revision took 77 years, crossing seven presidencies and 20 changes in ministers. In historical context, even advanced countries such as the Netherlands and Portugal took decades to formulate a new criminal law after the end of colonization (Hup, 2024).

The reform of the new Criminal Code (Law No. 1 of 2023) represents a significant milestone in the development of Indonesian criminal law. The new KUHP was born as a response to the urgent need to replace the old colonial-era code with a criminal law more aligned with national values, societal developments, and the challenges of modern times. The spirit of this new KUHP reflects a commitment to justice, humanity, and a more inclusive and adaptive criminal justice system. One core aspect of the new KUHP reform is the strengthening of the principle of legality (*nullum delictum nulla poena sine lege*), which emphasizes that criminal law must provide certainty and clarity.

This principle not only protects society from retroactive application of law but also ensures that a criminal offense can only be charged if the act is stipulated by law. This principle provides stronger legal protection for citizens and creates a more transparent and measurable legal system. Additionally, the new KUHP expands the scope of criminal law subjects to include both individuals and corporations as perpetrators of crimes (Supardin & Syatar, 2021). Recognizing corporations as legal subjects is a progressive step that reflects modern realities, where business entities often act as perpetrators of significant crimes, such as environmental violations and tax offenses. By establishing clear accountability mechanisms, the new KUHP seeks to integrate collective responsibility into the criminal justice system without neglecting the individual responsibility of those involved in the crime (Marimin et al., 2022).

This reform is also evident in the clarification of elements of criminal acts and criminal responsibility. The new KUHP provides more detailed definitions regarding unlawful acts (*actus reus*) and criminal intent (*mens rea*), so that law enforcement can be conducted more fairly and evidence-based. This approach emphasizes the importance of proving criminal intent as a central element in establishing criminal responsibility, particularly for cases involving public harm, such as tax fraud or corruption (Rosid et al., 2018).

Furthermore, the goals of criminal punishment in the new KUHP have undergone significant transformation. Criminal law now focuses on retributive punishment and achieving restorative justice, which includes compensating victims, rehabilitating perpetrators, and preventing future crimes. This approach reflects a new, more humane and progressive paradigm where the criminal justice system is designed to balance deterrent effects with opportunities for offenders to rectify their wrongdoings (Tjen & Evans, 2017).

The essence of the new KUHP is the integration of both retributive and restorative justice, aiming to create harmony in society. This reform accommodates local values, such as recognition of customary law (*hukum adat*), while also providing space for modern approaches like addressing

corporate crime and transnational crime. Thus, the new KUHP not only serves as a legal instrument but also reflects Indonesia's commitment to building a criminal justice system that is more just, inclusive, and relevant to the needs of the global community (Tahar et al., 2023).

This reform brings hope that Indonesian criminal law can be more effective in facing modern challenges, such as digitization, globalization, and the complexity of cross-border crime. With a spirit that reflects a balance between legal certainty and social justice, the new KUHP becomes a foundation for criminal law enforcement that not only punishes but also builds a more civilized society.

The new KUHP introduces a modern paradigm, distinct from the old KUHP. The focus is no longer on retribution (*lex talionis*) but on corrective, restorative, and rehabilitative justice. Corrective justice provides sanctions to perpetrators for their actions, restorative justice focuses on restoring the victim, and rehabilitative justice involves the recovery of both the perpetrator and the victim.

Changes in Principles in the New KUHP

1. New Paradigm of Justice

The new KUHP prioritizes justice over mere legal certainty. In cases where there is a conflict between legal certainty and justice, judges are instructed to prioritize justice.

2. Standard of Sentencing

One notable reform is the introduction of sentencing guidelines as a parameter for judges in determining penalties. The guidelines include 11 criteria covering aspects such as the degree of fault, the impact of the act, and the defendant's conditions. This provides a framework for judges to ensure that decisions are more measured.

3. Shift in Imprisonment

Imprisonment remains the primary penalty but is no longer considered the first option. Jail sentences are now sought primarily for serious crimes or habitual offenders, while alternatives such as supervision or community service are provided for lighter cases.

4. Integration of Living Law in Society

The new KUHP accommodates customary law, or living law in society, but with limitations. Customary law can only be applied if it does not contradict Pancasila, the 1945 Constitution, human rights, and internationally recognized legal principles.

Restorative Justice and the Challenges of Its Implementation

Criminal law reform in Indonesia has reached a significant milestone with ratifying the new Criminal Code (KUHP). This monumental step responds to the need for a legal system more in line with national values, contemporary developments, and universal principles of justice (*principium iustitiae universalis*). The new KUHP reflects not only the spirit of legal reform but also presents

challenges in its implementation, particularly concerning the principles of *lex certa*, *lex stricta*, *lex scripta*, and *lex temporis delicti* (Anggia et al., 2023).

The Paradigm of Punishment: From Retributive to Restorative

One of the significant reforms is the adoption of a restorative justice approach. In this paradigm, the focus of punishment shifts from mere penalization (*retributive justice*) to the restoration of relationships between the perpetrator, the victim, and society. This approach aligns with the principle of *pacta sunt servanda*, which emphasizes fulfilling agreements or settlements made between the parties involved in the crime.

For instance, articles in the new KUHP accommodate out-of-court resolutions, such as penal mediation. This reflects the application of the principle of subsidiarity, where criminal cases are resolved outside formal judicial proceedings whenever possible.

The new KUHP prioritizes restorative justice as an alternative method of resolving criminal cases, particularly for minor offenses. Although there are already regulations from the National Police and the Attorney General's Office regarding restorative justice, its implementation remains inconsistent. It is hoped that the government regulations being developed will provide clear guidelines, including criteria for cases that can be resolved restoratively (Marimin et al., 2022).

Restorative justice provides an opportunity for the offender and victim to reach a peaceful settlement if certain conditions are met, such as minimal harm and a light criminal threat. Some countries, like Belgium, even implement a dual-track system, where the formal legal process runs parallel to a restorative justice approach, providing greater flexibility (Pascoe, 2023).

In a multicultural society like Indonesia, the conflict between customary law and formal law poses a unique challenge. Article 2 of the KUHP stipulates that customary law can be applied only to minor cases and when there are no provisions in the KUHP. However, its implementation must be aligned with regional regulations, which will be further regulated through government regulations (Eddy & Rahayu, 2019a).

Article 218 of the new KUHP, which regulates insults against the President and Vice President, has sparked controversy. In its explanation, this article is not intended to limit freedom of expression but to regulate actions that defame or slander. Criticism of government policies and performance is still allowed if it does not attack the dignity of individuals personally. The new KUHP will become effective on January 2, 2026, providing three years for socialization and preparation. The government and law enforcement officials, including the police, prosecutors, judges, lawyers, and the general public, need to understand each article of this new KUHP. This socialization aims to ensure a common understanding, given the significant changes in this criminal law (Eddy & Rahayu, 2019b).

B. Criminal Formulation in the Indonesian Criminal Code (KUHP)

The new Criminal Code (KUHP), enacted through Law No. 1 of 2023, marks a significant milestone in the reform of criminal law in Indonesia. This new KUHP provides a legal framework that is more modern, relevant, and responsive to the needs of society. The principles, subjects,

criminal acts, criminal responsibility, and the objectives of criminal punishment outlined in the new KUHP serve as the foundation for realizing a criminal justice system that is not only just but also adaptive to changes in the times.

1. Principle of Legality

Article 1 of the KUHP affirms the principle of legality, which is the cornerstone of criminal law: "*No act may be punished except under the authority of a penal rule in force prior to the commission of the act.*" This principle ensures that any criminal act must have a clear legal basis before an individual can be subjected to criminal punishment (*nullum delictum nulla poena sine lege*). This principle also includes several other important rules, such as the prohibition of retroactive application of criminal law (*nullum delictum nulla poena sine lege praevia*), the prohibition of interpretation beyond the written law (*nullum delictum nulla poena sine lege stricta*), and the prohibition of punishment based on custom (*nullum delictum nulla poena sine lege scripta*).

In the context of tax crimes, the principle of legality is crucial for providing legal certainty. A taxpayer may only be punished if their actions have been clearly defined as criminal acts in the law, as stipulated in the KUP Law. Thus, this principle protects against excessive interpretation by authorities and ensures that the enforcement of tax law is in line with the applicable regulations.

2. Perpetrator of a Criminal Act

The new KUHP stipulates that the subject of a criminal act is not limited to individuals but also includes legal entities or corporations. Articles 45 to 50 of the KUHP make it clear that a corporation may be held criminally responsible if the crime is committed for the benefit of or on behalf of the corporation. Designating a corporation as a legal subject of criminal law reflects a significant advancement in Indonesian criminal law, considering that corporations often play a central role in crimes with significant impact, including cases of tax evasion or tax fraud.

These provisions explain that a corporation can be held criminally liable if an illegal act is carried out by an executive or representative with the authority to act on behalf of the corporation. For example, if a financial director intentionally falsifies financial reports to reduce the company's tax obligations, the corporation can be subject to criminal penalties in addition to the individual perpetrator. Penalties may include fines, suspension of business activities, or revocation of business licenses, as stipulated in Article 68 of the KUHP.

3. Criminal Acts and Criminal Responsibility

The new KUHP explains that a criminal act consists of two main elements: *actus reus* (the unlawful act) and *mens rea* (the guilty mind). *Actus reus* refers to the tangible action that violates the law, as regulated in Articles 12 to 23 of the KUHP. In the context of tax crimes, actions such as falsifying tax documents or concealing income can be classified as *actus reus*. These articles also regulate various forms of involvement in a crime, such as the principal

actor (*pleger*), ordering someone to commit a crime (*doelplegen*), participating in a crime (*deelneming*), and committing a crime together (*medeplegen*).

Mens rea, or the guilty mind, is a crucial element in determining criminal responsibility. The new KUHP mandates that *mens rea* must be proven to ensure that the act was committed with full awareness and an intent to violate the law. In tax-related cases, for instance, intentionally failing to report income or concealing tax documents demonstrates *mens rea*. This distinction separates deliberate criminal acts from violations that occur due to negligence or mere administrative error.

4. Objectives of Punishment

The new KUHP introduces a more comprehensive approach to the objectives of punishment, as outlined in Article 54. The goals of punishment include preventing the commission of crimes, deterring offenders, restoring the harm caused, and rehabilitating offenders to enable them to contribute to society again.

This approach reflects a shift in the role of criminal law, which is no longer solely focused on punishing the offender but also on achieving broader justice, including for the victims and society. In the context of tax crimes, this goal supports the application of a restorative approach, where the focus is on restoring state losses through the settlement of tax obligations by the offender while also educating the offender to improve future compliance. This approach aligns with the principle of *ultimum remedium*, where criminal penalties are only used as a last resort after administrative mechanisms have failed to achieve the legal objectives.

With regulations encompassing the principle of legality, subjects of criminal acts, elements of criminal acts and criminal responsibility, and a more comprehensive approach to the objectives of punishment, the new KUHP provides a stronger legal framework to support the enforcement of a modern, humane, and adaptive criminal justice system (Ahmad et al., 2020). This framework is also relevant in the context of tax crimes, where the restorative approach can provide more constructive solutions compared to traditional retributive approaches (Zakaria et al., 2024).

C. The Paradigm of Punishment in the Context of Tax Legislation

The paradigm of punishment in Indonesia's tax laws adopts the principle of *ultimum remedium*, which means that the application of criminal penalties is a last resort (*final remedy*) after all administrative efforts have been exhausted. Punishment is not seen as the primary tool (*prima ratio*) but rather as a final measure to enforce the law once softer and restorative alternatives have been employed. The primary goal of tax law, aside from restoring state finances, is to provide a deterrent effect against tax violations, in line with the general purpose of criminal law, which is to maintain social order and justice (Nursalam, 2017).

As part of implementing the *ultimum remedium* principle, the KUP Law offers taxpayers or individuals involved in tax crimes the opportunity to halt the criminal process by fulfilling their obligations, such as paying administrative sanctions and/or fines. This reflects a more restorative

and efficient approach, where the resolution of issues can be achieved without resorting to lengthy and resource-draining criminal proceedings, provided the offender demonstrates good faith in fulfilling their obligations. The following is the criminal formulation as stipulated in the KUP Law regarding criminal penalties in the field of taxation:

1. Formulation of Articles 38, 39, 39A of KUP Law

The formulation of criminal provisions in the field of taxation is outlined in the initial sections through the provisions of Articles 38, 39, and 39A of the KUP Law for actions committed by any person (*quodlibet*), which also applies to representatives, attorneys, employees of taxpayers (*fiscalis procurator*), or others who instruct to commit (*instigare*), participate in (*consentire*), advise (*hortari*), assist in committing (*auxilium praeberere*), deliberately cause (*causare*), facilitate (*facilitare*), obstruct (*obstruere*), conspire (*conspirare*), or engage in criminal acts in the field of taxation. These acts can be outlined in the following matrix:

Table 5. Formulation of Articles 38, 39, 39A of KUP Law

Element	Article 38	Article 39	Article 39A
Subject/Perpetrator	Any person	Any person	Any person
Mens Rea (Intent)	Negligence	Intentional	Intentional
Act	a. Failure to submit a Tax Return; or b. Submitting a Tax Return, but with incorrect or incomplete information, or attaching incorrect information.	a. Failure to register for a Taxpayer Identification Number (NPWP) or failure to report a business for confirmation as a Taxable Entrepreneur (PKP); b. Misusing or unlawfully using a Taxpayer Identification Number or Taxable Entrepreneur confirmation; c. Failure to submit a Tax Return; d. Submitting a Tax Return and/or information with incorrect or incomplete content; e. Refusing to undergo an audit as referred to in Article 29; f. Presenting false or	a. Issuing and/or using tax invoices, tax collection receipts, tax withholding receipts, and/or tax payment receipts that do not reflect actual transactions; or b. Issuing tax invoices without being confirmed as a Taxable Entrepreneur.

		<p>falsified bookkeeping, records, or other documents as if they were correct, or failing to reflect the actual conditions; g. Failure to maintain bookkeeping or records in Indonesia, failure to present or lend books, records, or other documents; h. Failure to store books, records, or documents that form the basis of bookkeeping or records, including processed data results from bookkeeping managed electronically or through an online application in Indonesia as referred to in Article 28(11); or i. Failure to remit taxes that have been withheld or collected.</p>	
Consequence	May result in loss of state revenue.	May result in loss of state revenue.	Does not require an element of loss.
Sanction	- Fine: A minimum fine of 1 times the unpaid or underpaid tax and a maximum of 2 times the unpaid or underpaid tax. - Imprisonment: Minimum imprisonment of 3 months and maximum imprisonment of 1 year.	- Imprisonment: Minimum imprisonment of 6 months and maximum imprisonment of 6 years. - Fine: A minimum fine of 2 times the unpaid or underpaid tax and a maximum of 4 times the unpaid or underpaid tax. - Heavier sanctions apply if the violation is repeated within 1 year.	- Imprisonment: Minimum imprisonment of 2 years and maximum imprisonment of 6 years. - Fine: A minimum fine of 2 times the tax amount stated in the tax invoice, tax collection receipt, and/or tax payment receipt that is non-compliant, and a

maximum of 6 times
that tax amount.

Source: Data processed by the author, 2025

2. Formulation of Articles 41, 41A, 41B, 41C, and 43 of KUP Law

Unlike the formulations of Articles 38, 39, and 39A, the following provisions pertain to criminal offenses committed by officials, those who order the commission of an offense, those who encourage, or those who assist in committing tax crimes. These provisions can be outlined in the following matrix:

Table 6. Formulation of Articles 41, 41A, 41B, 41C, and 43 of KUP Law

Element	Article 41	Article 41A	Article 41B	Article 41C	Article 43
Subject/Perpetrator	Tax-related officials	Any person required to provide information or evidence	Any person who obstructs or hinders an investigation	Any person who fails to fulfill obligations under Article 35A	Any person who orders, encourages, or assists in committing a tax crime
Mens Rea (Intent)	Negligence (Paragraph 1) Intentional (Paragraph 2)	Intentional	Intentional	Intentional	Intentional
Act	a. Failure to fulfill the obligation to maintain tax confidentiality (Article 34). b. Disclosure of tax secrets due to negligence or intentional acts.	Failure to provide requested information or evidence. Providing false information or evidence.	Obstructing or hindering the investigation of a tax crime.	a. Failure to fulfill obligations under Article 35A(1). b. Causing non-fulfillment of the obligations of officials or other parties under Article 35A(1). c. Failure to	Ordering, encouraging, or assisting another person in committing a tax crime.

				provide data and information requested under Article 35A(2).	
Consequence	Disclosure of tax confidentiality may harm relevant parties and violate taxpayer data confidentiality.	Failure to fulfill the obligation to provide requested information or evidence, or providing false information.	Investigation of tax crimes is obstructed or hindered.	Non-fulfillment of tax obligations by the relevant party, disrupting the smooth administration of taxation.	The tax crime is committed by the authorized or assisted party.
Sanction	- Imprisonment: Maximum imprisonment of 1 year (Paragraph 1). - Fine: Maximum fine of IDR 25,000,000 (Paragraph 1). - Imprisonment: Maximum imprisonment of 2 years (Paragraph 2). - Fine: Maximum fine of IDR 50,000,000 (Paragraph 2).	- Imprisonment: Maximum imprisonment of 1 year. - Fine: Maximum fine of IDR 25,000,000.	- Imprisonment: Maximum imprisonment of 3 years. - Fine: Maximum fine of IDR 75,000,000.	- Imprisonment: Maximum imprisonment of 1 year or a fine of up to IDR 1,000,000,000 (Paragraph 1). - Imprisonment: Maximum imprisonment of 10 months or a fine of up to IDR 800,000,000 (Paragraphs 2 and 3).	- The same penalties as those imposed on the person who was ordered or assisted, whether imprisonment or fine.

Source: Data processed by the author, 2025

D. The Principle of *Ultimum Remedium* in Tax Criminal Law

In tax criminal law, the principle of *ultimum remedium* is applied, which means that criminal sanctions are imposed only after all administrative measures and other resolution efforts have failed. Under this principle, taxpayers or any individuals involved in tax crimes are given the opportunity to rectify their mistakes through the payment of fines or other obligations, thus halting the legal process. This step also reflects the application of the principle of restorative justice, in line with the philosophy of reform in the newly enacted Criminal Code (KUHP), where the main goal of criminal sanctions in taxation is not to imprison the offender but to restore state finances and provide a deterrent effect. In other words, if the goal of criminal sanctions is achieved, imprisonment is not necessary (Riyadi & Prasetyo, 2021).

However, if the taxpayer or perpetrator of the tax crime does not take the opportunity to settle their obligations, then criminal sanctions, including imprisonment, must be pursued as an *ultimum remedium* to achieve a greater legal purpose, as explained by Gustav Radbruch. Radbruch emphasized that the aim of the law is to achieve justice, legal certainty, and utility. When faced with a choice between upholding justice or legal certainty, justice must take precedence, as it is the foundation for the application of law that is dignified and humane (Soebandrija et al., 2023).

The following outlines the rights provided to taxpayers to halt the legal process in the field of taxation:

1. Preliminary Evidence Examination Stage (Article 8(3) KUP Law)

Even after a preliminary evidence examination, taxpayers can still reveal their wrongdoing voluntarily through a written statement. This applies if the taxpayer fails to submit a tax return submits an incorrect or incomplete tax return or attaches false information, as referred to in Articles 38 or 39(1)(c) and (d). This disclosure can be made if the investigation has not been notified to the Public Prosecutor by the investigator from the Indonesian National Police. Furthermore, this disclosure must be accompanied by the payment of the outstanding tax obligations, including an administrative fine of 100% of the underpaid tax amount.

2. Termination of Investigation by the Investigator (Article 44A)

An investigator, as referred to in Article 44(1), may terminate a tax crime investigation based on the provisions of Article 44(2)(k), with the following considerations:

- First, the taxpayer has disclosed their wrongdoing as regulated in Article 8(3), by revealing their error or false action, which may be grounds for the termination of the investigation.
- Second, there is insufficient evidence supporting the occurrence of a tax crime, which prevents the investigator from proceeding with further investigation.

- Third, the event in question is not classified as a tax crime, and thus the investigation is terminated due to the lack of elements of a tax crime as defined by law.
- Fourth, for legal reasons, the investigation is terminated based on higher legal considerations or other valid reasons according to applicable legal provisions. As such, the termination of the investigation can be carried out by the investigator based on legal grounds under the applicable regulations.

3. Investigation Stage (Article 44B KUP Law)

Article 44B regulates the termination of a tax crime investigation upon the request of the Minister of Finance. The Attorney General can terminate the investigation at the latest within six months from the date of the request letter. However, this termination can only occur after the taxpayer or suspect has settled the state revenue loss under the provisions in Articles 38 or 39, along with administrative fines that vary, namely one time the loss for Article 38, three times the loss for Article 39, and four times the tax amount listed in the tax invoice, tax collection proof, or tax payment proof as stated in Article 39A.

Additionally, suppose the criminal case has been transferred to court. In that case, the defendant may still settle the state revenue loss or the outstanding tax amount, provided that the settlement is made according to the provisions stated in paragraph (2). Payments made during the investigation or trial phase can be counted as payment for the criminal fines imposed on the defendant. The settlement made becomes a consideration for the defendant to be prosecuted without the imposition of a prison sentence.

CONCLUSION

The new Criminal Code (KUHP) also places special emphasis on tax crimes. In this context, the application of restorative justice becomes a distinct challenge due to the often administrative nature of tax crimes and their implications on state losses. The adage *nullum crimen sine lege, nulla poena sine lege* (no crime without law, no punishment without law) becomes an essential foundation in ensuring that the formulation of tax crimes meets the principles of clarity and legal certainty.

In practice, the adoption of a restorative approach to tax crimes can be seen through the mechanism of paying state losses as a condition for halting criminal proceedings. This aligns with the principle of *favor rei*, which emphasizes the protection of the defendant's rights during the legal process.

Implementation Challenges and Legal Certainty

Despite its great potential, the implementation of the new Criminal Code is not without challenges. One of these challenges is harmonizing the new Criminal Code with other sectoral laws, such as the KUP Law. The principle of *lex specialis derogat legi generali* (special law overrides general law) must be applied carefully to avoid overlapping regulations.

Furthermore, there are challenges in ensuring consistent application of the *in dubio pro reo* (in doubt, for the defendant) principle in certain cases, particularly those involving the interpretation of norms that remain general in the new Criminal Code.

The enactment of the new Criminal Code is a significant step forward in the revitalization of criminal law in Indonesia. By adopting a restorative justice approach and adhering to the basic principles of criminal law, the new Criminal Code is expected to be a more responsive instrument to societal needs. However, its success depends heavily on consistent implementation, harmonization with other laws, and a deep understanding of legal principles such as *nullum crimen sine lege* and *favor rei*. Thus, this reform is not only a legislative product but also a manifestation of substantive justice.

Although the new Criminal Code does not explicitly regulate tax crimes, the provisions in the articles of the Criminal Code indicate the application of more adaptive legal principles to contemporary issues, such as crimes related to information technology and coercion related to tax.

In the context of taxation, several provisions in the Criminal Code open the space for the application of criminal law principles to violations related to tax obligations, including money laundering and the falsification of tax documents. As stated in Article 4 of the Criminal Code, which acknowledges the application of criminal law to crimes whose consequences are experienced or occur within the territory of the Republic of Indonesia, this allows the application of criminal provisions to tax crimes committed by taxpayers outside Indonesia, as long as such acts result in state losses.

In connection with this, changes in the Criminal Code acknowledge the importance of adjusting the criminal provisions outlined in regulations outside the Criminal Code, such as KUP Law. This is reflected in Article 187 of the Criminal Code, which states that provisions in the First Book of the Criminal Code also apply to acts that are punishable according to other laws. Therefore, the new Criminal Code recognizes regulations outside the Criminal Code, including tax laws, which integrate tax criminal law as an integral part of Indonesia's legal system.

Restorative Approach in Tax Crime Enforcement

Regarding the implementation of a restorative approach in handling tax crimes, this concept aligns with the principle that the imposition of criminal sanctions in the tax sector is *ultimum remedium* (a last resort). In other words, tax criminal provisions are only applied as a last step, after administrative measures have failed to be implemented (DDTC, 2021). In this context, a restorative approach in tax law enforcement aims to restore state losses more humanely, without disregarding efforts to restore the relationship between the taxpayer and the state.

For example, in Article 39 of the KUP Law, which regulates tax crimes, criminal sanctions such as imprisonment and fines are imposed on taxpayers who intentionally submit a false or incomplete tax return. The restorative approach allows the taxpayer to voluntarily disclose their wrongdoing, accompanied by the settlement of the outstanding tax obligations and administrative fines. This indicates that punishment in the tax sector is not solely retributive but also focuses on a more comprehensive effort to restore state losses.

Although the changes in the Criminal Code are quite adaptive in responding to developments in the taxation world, challenges remain in applying tax criminal sanctions in a broader context. For instance, Article 624 of the Criminal Code, which states that fines under laws outside the Criminal Code exceeding Category VIII (Rp 50 billion) are replaced with a fine of Category VIII, could lead to discrepancies with tax criminal provisions that may impose fines exceeding Rp 50 billion. Therefore, adjustments are needed in the tax criminal provisions to avoid confusion in implementation, including the potential issuance of derivative regulations bridging the tax provisions in the KUP Law and the new Criminal Code.

In this regard, it should be emphasized that the revitalization of criminal law in handling tax crimes not only focuses on imposing sanctions as a form of criminal responsibility but also emphasizes a restorative aspect aimed at recovering state losses and providing a more humane resolution. As times evolve and the complexities of taxation increase, a more adaptive and progressive approach to tax law enforcement becomes necessary to ensure the achievement of fair and just legal objectives while optimizing state revenue.

Overall, the changes in the Criminal Code that recognize tax criminal provisions outside the Criminal Code and emphasize legal certainty and the restoration of state losses provide room for applying a restorative approach in handling tax crimes in the era of legal reform. This not only strengthens Indonesia's criminal law system but also paves the way for a more comprehensive, fair, and contemporary legal resolution mechanism in the taxation sector.

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