

Application of The *Ultimum Remedium* Principle in Tax Criminal Actions: A Juridical Study

Hendri

Faculty of Law, University of Indonesia, Indonesia, E-mail: hendri.suvaco@gmail.com

Abstract. *This research aims to analyze the application of the ultimum remedium principle in tax criminal actions in Indonesia. The ultimum remedium principle is a legal principle that states that criminal punishment is the last resort in law enforcement. This principle is relevant in the context of tax offenses because the main purpose of tax law is to increase tax compliance and collect state revenue, not to punish taxpayers. This research employs a normative research method with a doctrinal legal approach. Research data is obtained from a study of literature and regulations related to tax offenses. The research findings indicate that the ultimum remedium principle has been implemented in Indonesian tax criminal law. This is evident from the provisions regulating administrative sanctions and criminal tax sanctions. Administrative sanctions are lighter than criminal sanctions and must be applied first before criminal sanctions can be imposed. This research also shows that several factors can influence the application of the ultimum remedium principle in tax offenses. These factors include the seriousness of the tax offense, the taxpayer's malicious intent, and the deterrent effect that is desired.*

Keywords: *Crime; Principle; Tax.*

1. INTRODUCTION

Taxes are mandatory payments imposed by the government on individuals, companies or other entities to finance fiscal and public needs. Taxes are one of the main sources of income for the government and are used to finance various public programs and services such as education, health, infrastructure and security (Afuberoh & Okoye, 2014). In Indonesia, the tax system has become an integral part of people's lives, where every individual and business entity is obliged to pay taxes. Taxpayer is a term that encapsulates all communities that have a legal responsibility to make financial contributions to the government through paying taxes. Taxes paid by the public are used by the government to support various public programs and projects, such as education, health, infrastructure, and security and order (Willmott, 2022).

Criminal offences in the realm of taxation do not only involve taxpayers, but also the tax officers themselves can be subject to criminal sanctions if they are involved in the misuse of tax funds. This can be subject to criminal sanctions in accordance with the

provisions in the Corruption Crime Law and the Taxation Law (Pardede, 2020).

Although tax law is included in the realm of state administrative law, the enforcement of penalties in the tax law indicates a criminalisation process in the tax sector that is closely related to political decisions in the application of criminal law that determine the path, direction and implementation (Afrilia, 2023).

Two main aspects in policies involving the use of criminal sanctions, according to Barda Nawawi Arief, are first, the determination of actions that must be declared as criminal offences, and second, the determination of appropriate sanctions for these offences; and second, criminalisation requires a law enforcement system that involves the Criminal Justice System mechanism (Virginia & Soponyono, 2021).

The importance of criminal law enforcement in the taxation sector cannot be underestimated due to the potential loss of state revenue from the tax sector caused by various violations of tax laws, which resulted in the emergence of tax crimes.

In Indonesia, criminal penalties in taxation can be imposed for various reasons, such as taxpayers who due to negligence do not submit Tax Returns (SPT), or taxpayers who submit SPT but falsify documents or fill in incorrect data, taxpayers who deliberately do not reporting tax returns, refusal to undergo inspection by tax officers, not carrying out bookkeeping properly and misuse of Taxpayer Identification Number (NPWP) (Pasaribu, 2023). Criminal acts in the taxation sector are included in the category of administrative criminal law or dependent crimes, which are known for their simple nature and flexibility in enforcement, as long as the legal objectives are achieved, namely that taxpayers comply in paying taxes in accordance with their obligations. The use of general criminal law or special criminal law to handle criminal acts in the field of taxation is considered inappropriate and has the potential to cause legal problems and injustice (Turksen et al., 2023).

In its implementation, tax crimes often cause controversy because of the principle of *ultimum remedium* that applies in criminal law. *Ultimum remedium* in criminal law means that if a problem can be resolved through other legal procedures, such as civil law or administrative law, then this procedure should be taken first before using criminal legal action (Abdurrachman et al., 2021). The principle of *ultimum remedium*, which literally means "last solution," implies that criminal law enforcement should be the last resort or final solution taken by the legal system to respond to violations. The principle of *ultimum remedium* according to experts, as in (Sallie & Barthos, 2023) *ultimum remedium* which means that punishment is determined as a last resort when a different agreement cannot be enforced. Where in deciding whether an act is unlawful and the demands for it are known, there are 3 main benchmarks, namely legality rules, supporting guidelines, and balance measures. Meanwhile, according to (Najicha et al., 2022), the principle of *ultimum remedium* is to apply criminal law if sanctions in other areas of law, for example administrative sanctions and civil sanctions, as well as other alternative legal solutions are no longer effective.

Previous research by (Yumanto & Hutaeruk, n.d.), found that the application of tax criminal sanctions as a *primum* or *ultimum remedium* ensures that there is unity and conformity between principles and concrete regulations in the law, so that legal principles can carry out their function well in overcoming uncertainty. Legal principles

as secondary rules do not need to be concretized in a primary rule, in this case the KUP Law, but must be seen as an internal awareness point of view from law enforcement agencies and then society. Another study by (Kartanto et al., 2020), found that the application of *Ultimum remedium* in Tax Crimes in Indonesia does not provide legal certainty for Taxpayers, because the regulatory instrument has uncertainty in its application whether to use the *Ultimum remedium* or Premum Remedium Principle, this is because the Directorate General of Taxes has very broad authority regarding the imposition of criminal sanctions and administrative sanctions.

For example, one of the cases in the Semarang district court studied by (Ashari, 2021) stated that the application of the *ultimum remedium* principle in tax crime cases began at the beginning of case handling by offering the opportunity to take advantage of the tax amnesty law and Article 44B of the Law on General Provisions and Tax Procedures. The judge also considers whether the taxpayer has benefited from the tax offence. Obstacles encountered include insufficient financial condition and company closure. The proposed solution in the application of the *ultimum remedium* principle for taxpayers involved in tax criminal offences needs to be considered

Another study by (Pradana, 2023) explained that the decision regarding the Public Prosecutor's Indictment Number Case Register: PDS-02/Pkrto/Ft.2/01/2020 in case No. 31/Pid.B/2020/PN Pwt., was declared null and void because it did not include administrative steps that had been taken by the Tax Office before the investigation against the defendant was carried out. Thus, the judge's decision shows the application of the *ultimum remedium* principle in the tax crime case and is considered appropriate.

Based on this background, the researcher is interested in examining more deeply the application of the *ultimum remedium* principle in non-tax crimes in a juridical study. The novelty of this research considers the influence of social and technological changes on the application of this principle in overcoming tax crimes. The results of the research can provide a basis for recommending improvements or improvements in the tax law system, especially in terms of handling criminal acts. These recommendations may include changes to sentencing provisions, enforcement procedures, or deterrence policies. This research aims to examine the application of the *ultimum remedium* principle in tax crimes.

2. RESEARCH METHODS

This research uses normative legal research methods. Normative legal research methods are research approaches that focus on analyzing legal documents, statutory texts, court decisions, and legal literature to understand and evaluate applicable legal norms. This method does not involve collecting empirical data or direct observation, but rather analyzes legal texts and other legal documents (Efendi et al., 2016). The data collection technique used in this research is a literature study by exploring journals, books and other information relevant to the research obtained from Google Scholar. The data that has been collected is then analyzed in three stages, namely data reduction, data presentation and concluding.

3. RESULTS AND DISCUSSION

Every sovereign nation needs a consistent source of revenue to address the government's various financial needs. In Indonesia, one of the main and largest sources of income is taxes. Taxes play an important role in providing the funds needed to support various development programs and government policies. Taxes are an important source of revenue to finance expenditure, both in the form of routine expenditure and development expenditure. The government also makes taxes a policy tool as a monetary policy tool (Nendi et al., 2019).

The tax collection system in Indonesia operates individually Self-Assessment, where taxpayers are given the responsibility to register, calculate, assess, pay and report their own taxes (Jadidah, 2023). The consequence of this implementation is that there is the potential for violations by taxpayers, including tax avoidance, which is a transaction strategy to reduce tax liabilities by exploiting loopholes or weaknesses in tax regulations. Apart from that, tax evasion is an attempt to avoid taxes by involving illegal schemes, which aim to reduce tax obligations by violating tax regulations. One common method of tax avoidance offenses is hiding income from tax officials in Indonesia or transferring wealth abroad to avoid detection by tax officials (Said, 2017).

According to (Silalahi, 2023), they argue that tax crimes can be justified through three main factors. First, these violations result in state financial losses, which have a negative impact on the implementation of government, development and community welfare. Second, tax crimes harm society by taking funds that should be used for public interests, such as infrastructure development, education, health and social welfare. Third, not paying taxes violates legal obligations established by the state, because taxes act as a means to fund public expenditure.

The widespread practice of tax evasion and avoidance in Indonesia can cause a decrease in state revenues from the tax sector. The direct impact of this low tax revenue is the obstruction of infrastructure development planned by the Indonesian government, due to limited funds available. Therefore, it is important to implement effective law in overcoming this problem. In (Rosembuj, 2022) from a juridical perspective, taxes do contain elements of coercion. This means that if tax obligations are not implemented, there are legal consequences that could occur. The legal consequence is the imposition of tax sanctions.

One of the strategies used by the Directorate General of Taxes to increase tax compliance and revenue is through law enforcement (Kartanto et al., 2020). Tax law enforcement refers to the steps taken to implement and enforce the legal norms contained in the Law on General Provisions and Tax Procedures (UU KUP). The KUP Law, which is Law Number 28 of 2007 which was last amended by Law Number 7 of 2021, states that law enforcement can be carried out through two approaches, namely administrative and criminal.

In Indonesia, in its provisions, tax criminal law adopts the *ultimum remedium* principle, the *ultimum remedium* principle is one of the principles in Indonesian criminal law which states that criminal law must be the last resort in law enforcement. This means that if a case can take another route (negotiation, mediation, or administrative law) then it is permitted (Saptono & Ayudia, 2022). The principle of *ultimum remedium* has

become widely accepted as an idea for controlling the deep state acts of criminalization by the state and the use of criminal law, considering that criminal sanctions have sanctions that are reflective and disruptive (Danil & Warman, 2019). This means that the application of criminal sanctions must be carried out as a last resort, after other efforts to enforce the law have been carried out and have been unsuccessful. Some factors must be considered to maintain the principle of *ultimum remedium* as a characteristic of criminal law as follows (Ardika, 2021):

1. Do not use criminal law emotionally.
2. Do not use criminal law if the victim or loss is unclear.
3. Do not use criminal law if the costs of punishment are greater than the losses from the criminal act committed.
4. Do not use criminal law if punishment is deemed ineffective.

Tax regulations in Indonesia are regulated in Law no. 7 of 2021 concerning Harmonization of Tax Regulations (HPP) clarifies the principle of *ultimum remedium* contained in article 44B, this article states that the termination of an investigation can only be carried out after the Taxpayer or suspect has paid off losses in state income plus administrative sanctions in the form of fines. There are several provisions for administrative sanctions, namely: a. If there is a loss in state income as regulated in article 38 (not submitting the notification letter correctly) then the fine that must be paid is 1 (one) times the amount of loss in state income. b. If there is a loss in state income as regulated in Article 39 (violation of NPWP, falsifying tax documents, failure to submit taxes), then the fine that must be paid is 3 (three) times the amount of loss in state income. c. If it is related to the amount of tax in the tax invoice, proof of tax collection, proof of tax withholding, and/or proof of tax payment, then the fine that must be paid is 4 (four) times the amount of the tax.

Article 44B of the HPP Law, to be precise, paragraph 2a, also regulates that if a criminal case has been transferred to court, the defendant can still pay off losses in state revenue plus administrative sanctions. Furthermore, in paragraph 2b it is stated that Payments made by taxpayers, suspects or defendants from the investigation to trial stages, if the payment amount has not been met, can be considered for prosecution without being sentenced to prison. Then, if the payment made by the Taxpayer, suspect or defendant at the investigation stage until the trial does not meet the amount of the payment, it can be calculated as payment of the criminal fine imposed on the taxpayer defendant (paragraph 2c). Based on the article in the HPP Law, it is quite clear that tax legislation in Indonesia describes the application of the *ultimum remedium* principle in its provisions.

In line with the results of research by (Muhammad Rizky, 2023) which explains that the Law on General Provisions and Tax Procedures (KUP) which has been amended by the Tax Audit Results Law (HPP) in substance and theory has strengthened the regulation of the *ultimum remedium* mechanism. This mechanism aims to increase the recovery of state revenue losses and achieve the principle of expediency of KUP. In its arrangement, the *ultimum remedium* is strengthened by a fine that cannot be replaced by imprisonment. If the fine is not paid, confiscation of the convict's assets will be

carried out in accordance with Article 44C KUP. This strengthens the *ultimum remedium* function. In addition, KUP that provides justice and legal certainty must clearly regulate the obligation of prior administrative action in handling tax administrative crimes conducted by the Directorate General of Taxes or its subordinate agencies against violators. However, the current KUP has not provided justice and legal certainty because the interpretation of *ultimum remedium* is only limited to postponing criminal sanctions and has not regulated the closure of the criminal justice system. Administrative action in tax criminal offences is currently still optional and depends on the discretionary decision of the Directorate General of Taxes.

The main aim of the *ultimum remedium* principle in tax crimes is to obtain acceptance of the relief of sanctions given, so that taxpayers will comply and voluntarily pay the tax shortfall as well as the fine. Through this principle, if the taxpayer still does not carry out his obligations, then final action will be taken through criminal action. So, punishment in the form of imprisonment or imprisonment is not the main objective but administrative sanctions take priority in resolving tax law (Rizal & Fakrulloh, 2022). According to Roxin in (Naibaho, 2021), he emphasized that the use of criminal law can only be considered if other efforts, such as civil lawsuits, administrative settlements, non-criminal sanctions, and the like, are unsuccessful. Therefore, criminal law is considered the "ultimate ratio of social policy" or the final tool in social policy. This shows that the principle of *ultimum remedium* as a criminal punishment can only be applied as a last resort after other lighter or alternative measures have been tested and have been unsuccessful. The application of this principle has existed in the context of Indonesian criminal law since the first tax reform period in 1983, although its implementation is still implicit or indirect.

In practice, the application of the *ultimum remedium* principle in Indonesian criminal law has not been explicitly described or regulated in detail in statutory regulations. However, this concept can be recognized as part of the criminal law approach in Indonesia, which puts forward the principle that criminal punishment should be a last resort after careful consideration of lighter or rehabilitative alternatives. The application of the *ultimum remedium* principle in tax crimes needs to take into account the influence of social and technological changes. Social changes, such as increasing public awareness of the importance of tax compliance, can encourage efforts to enforce tax laws in a non-criminal manner. Meanwhile, technological changes, such as developments in information technology, can facilitate non-criminal monitoring and enforcement of tax laws.

Social changes that occur in society have a significant impact on the application of the *ultimum remedium* principle in handling tax crimes, where the increasing complexity of economic transactions and advances in information technology mean that tax offenders can easily carry out tax avoidance practices that are complex and difficult to detect (Jaya & Nurifanti, 2021). This places greater demands on the application of the *ultimum remedium* principle to ensure that tax law enforcement is not only effective but also proportional to the level of offences that occur. In addition, tax fairness is maintained amidst the complexity of cross-border transactions that take place.

Social change also includes the evolution of values and norms in society related to tax obligations. The application of the *ultimum remedium* principle needs to consider the appropriate response of the tax authority to these changes. For example, it may

require a more educative approach or more active deterrence to ensure better tax awareness and compliance amid changing social values related to tax obligations (Kamal Rijal, 2022).

Social change also includes an evolution in people's perspective on government authority and transparency. This encourages tax authorities to apply the *ultimum remedium* principle more carefully and transparently, providing strong justification for legal actions taken and ensuring that taxpayers' rights are respected. This reinforces the importance of the *ultimum remedium* principle as a framework that is not only effective in tax law enforcement but also in line with current societal expectations and values.

The role of taxpayer awareness and compliance is very important for a country in its efforts to collect state revenue from the tax sector (Rahayu et al., 2017). When public awareness increases regarding the importance of tax compliance, this can be an incentive for taxpayers to comply with tax regulations voluntarily. In this way, non-criminal tax law enforcement efforts, such as warnings and administrative fines, can be more effective. When taxpayers understand the possible consequences of tax violations and recognize the importance of their contribution to the country's development, the possibility of tax violations can be minimized. This means that increasing awareness can have a positive impact by reducing the number of tax crimes that occur.

Increasing public awareness of the importance of tax compliance can have a positive impact in forming a culture of compliance that encourages taxpayers to comply with their obligations properly. Tax compliance includes actions such as reporting taxable income accurately and paying tax contributions according to a specified schedule (De Neve et al., 2021). In this context, the government's initiative to increase public understanding of the tax system and the positive benefits of tax compliance is a strategic step to achieve optimal goals in collecting state revenue.

According to (Alamri et al., 2021), one of the actions taken by the government involves the role of Public Relations of the Primary Tax Service Office (KPPP) branch to increase public awareness regarding the obligation to pay taxes. In this context, KPPP Public Relations can utilize various types of media, including print media (such as leaflets, brochures, newspapers, billboards and banners), electronic media (including radio, television and cellphones), as well as social media via the official Regional Tax website (such as Instagram and Facebook). Apart from that, media gathering or socialization activities can also be held with various target groups, such as civil servants, BUMN employees, private employees, professions, business associations and students on various campuses. These steps were taken to provide effective information and increase public understanding of the importance of fulfilling tax obligations.

Initiatives to create a culture of compliance as mentioned above, the government hopes to see an increase in accurate tax reporting and timely payments from taxpayers. In addition, it is hoped that there will be a reduction in tax violations, which in turn will provide a stronger basis for using the *ultimum remedium* principle in law enforcement. The principle of *ultimum remedium*, which emphasizes that criminal sanctions must be the last step after other efforts, can be implemented more effectively when the public generally complies with their tax obligations. Then, apart

from considering social changes, technological changes can also influence the application of this principle in tax crimes, such as increasing information technology can make it easier for the government to supervise and enforce tax laws. In this context, technological advances can increase the effectiveness of tax law enforcement efforts that do not involve criminal sanctions, so that the use of criminal sanctions can be more focused and selective.

The development of information technology has significantly changed the tax landscape, affecting the application of the *ultimum remedium* principle in handling tax crimes. Technology has provided new opportunities for more complex and sophisticated tax avoidance practices (Disemadi & Delvin, 2021). With technology, tax offenders can easily hide their transactions or assets digitally, thus increasing the challenges for tax law enforcement. Therefore, the application of the *ultimum remedium* principle becomes increasingly important to ensure that tax law enforcement is effective and proportional to the level of offences that occur, and can adapt to these technological developments.

Technology has also enabled tax authorities to improve efficiency in tax data collection and analysis. The use of technologies such as big data analytics and artificial intelligence allows for faster and more accurate identification of patterns of suspicious tax behaviour. This can strengthen the application of the *ultimum remedium* principle by allowing tax authorities to more effectively target enforcement actions towards the most serious or significant tax offenders.

Technology and the use of the internet to process large amounts of data regarding an increasing number of taxpayers have become very common elements in today's world (Chiang & Limato, 2017). The use of information technology provides the government with more sophisticated tools to monitor tax activities in real-time, analyze transaction data, and detect potential tax violations. With a more automated and connected system, the government can be more efficient in identifying non-compliance and responding quickly without having to always rely on criminal sanctions.

Since 2009, the Directorate General of Taxes has issued an internet-based tax administration system. Electronic systems for tax administration include e-filing, e-billing and e-invoicing (Chiang & Limato, 2017; Harianto et al., 2020). E-filing is an online taxation system used by taxpayers in reporting real and online tax returns. Meanwhile, e-billing is used for online tax payments using a billing code, and finally e-invoicing is intended to provide convenience, comfort and security for taxable entrepreneurs in carrying out tax obligations.

The use of information technology can create a law enforcement approach that is more proactive and responds quickly to changing conditions in the field. This allows the government to use criminal sanctions more carefully and focusedly, especially in situations where non-criminal law enforcement measures have already been implemented. In other words, information technology can increase the responsiveness of tax law enforcement, allowing the government to adjust law enforcement strategies according to current needs and conditions. Apart from that, this approach is also in accordance with the principle of *ultimum remedium*, which emphasizes that criminal sanctions must be the last step after other efforts. The application of the *ultimum remedium* principle in tax crimes should always take into account social dynamics and

the latest technology to ensure that law enforcement achieves the right balance between justice, prevention and efficiency.

Social and technological changes have a significant impact on the application of the *ultimum remedium* principle in handling tax crimes. First, in the context of social change, values and norms in society evolve over time, which can affect perceptions and attitudes towards tax obligations. This raises the need to adjust tax law enforcement strategies, including the application of the *ultimum remedium* principle, to remain relevant to the evolving social values. Therefore, research in juridical studies needs to pay attention to how these social changes affect the dynamics of tax law enforcement and the application of the *ultimum remedium* principle.

Second, the development of information technology provides new challenges and opportunities in tax law enforcement. On the one hand, technology allows tax actors to conduct tax avoidance practices that are increasingly complex and difficult to detect. On the other hand, technology also provides more powerful tools for tax authorities to collect data, analyse tax compliance, and detect tax violations. In this context, juridical studies need to consider how technology affects the effectiveness of the application of the *ultimum remedium* principle in dealing with tax crimes.

In addition, social and technological changes also affect the tax regulatory framework. For example, changes in societal values and norms may influence the formation and change of tax laws. Similarly, developments in information technology may require adjustments in tax regulations to address new challenges that arise, such as tax evasion through online transactions or the need to develop a more integrated tax reporting system. In this case, juridical studies on the application of the *ultimum remedium* principle need to pay attention to the dynamics of social and technological changes within the framework of tax regulation.

Finally, social and technological changes also affect people's perceptions and expectations of transparency, fairness, and effectiveness of tax law enforcement. The public expects that tax law enforcement is conducted fairly, transparently, and effectively, in accordance with the values embraced in the evolving society. Therefore, the application of the *ultimum remedium* principle must take into account these expectations and adjust the tax law enforcement strategy to remain relevant and in accordance with the needs of society and technological developments.

However, it is necessary to explain first the decision to apply criminal tax sanctions as a first option (*primum remedium*) or as a last step (*ultimum remedium*). Even though in theory, the principle of tax criminal prosecution is considered the final solution (*ultimum remedium*), in practice, many taxpayers are immediately investigated based on evidence of the beginning of a tax crime, this is certainly contrary to the principle of *ultimum remedium*. A study (Anindyajati et al., 2015), shows that several Constitutional Court decisions regarding criminal sanctions provide an understanding that the inclusion of criminal sanctions in laws can be considered as the first action (*primum remedium*) in responding to the problem of criminal acts in Indonesia. Criminal Law is considered an effective solution to overcome this problem.

It is important to understand that the use of criminal sanctions as a *primum* or *ultimum remedium* must be in accordance with the principles of criminal law which prioritize

justice, proportionality and legal certainty. According to (Hidayat & Sinaga, 2022) *primum remedium* refers to the concept of using criminal sanctions as the first or main option in responding to legal violations. The use of criminal sanctions as a *primum remedium* requires the fulfillment of certain criteria, such as criminal sanctions must be very necessary and cannot be replaced by other law enforcement tools, unlawful acts have a detrimental impact on many parties, if the suspect or defendant is a recidivist, the losses incurred cannot be recovered. back and other lighter law enforcement mechanisms have become ineffective or ignored. Meanwhile, *ultimum remedium*, which is the opposite, refers to the concept of using criminal sanctions as the final or harshest instrument among other legal instruments, which means that there are other alternative solutions besides applying criminal law rules.

(Marbun, 2014) in his research argues that the application of criminal penalties in Law No. 28 Year 2007 on General Provisions of Taxation produces conceptual problems. Tax Law, as part of State Administrative Law, requires coercive action against taxpayers, especially taxable entrepreneurs, which is basically considered as criminalisation of administrative behaviour. Criminal Law, through the principle of legality, demands the existence of norms that expressly and clearly regulate sanctions in laws and regulations, which seems to be violated by Law No. 28 Year 2007 on KUP. The parameters of tax criminal offences are only limited by the elements of negligence and intentionality, with the application depending on the decision of the authorised agency. This results in transactional behaviour in practice. Therefore, the *ultimum remedium* principle becomes very important to prevent arbitrary abuse of discretion.

In addition, (Achmad, 2016) in his research explained that Taxation Crimes involve 3 main problems in criminal law, namely how the crime is defined, who is responsible, and what the solution is. Certain articles, such as Articles 38, 39, 39A, 40, 41, 41A, 41B, 41C, 43 and Article 43A, formulate types of tax offences as accidents and crimes as intentional acts. Individuals and companies can be perpetrators of tax offences. Criminal liability for individuals depends on their guilt, while for companies, the liability rules are different. Criminal sanctions for perpetrators include imprisonment and fines, where fines are more frequently used. Prison sanctions are considered as a last resort.

According to (Rusdiana, 2022), the preparation and implementation of criminal law related to violations in the field of taxation show the non-fulfilment of several principles, including the principle of rationality of the harm that can be caused by the criminal act, the principle of subsidiarity which states that criminal law should be the last step (*ultimum remedium*), the principle of proportionality which emphasises the importance of balance between the harm caused and the purpose of punishment. The principle of legality is also considered by focusing on the principle of legal certainty (*lex certa*) and the strictness of legal interpretation (*lex stricta*), as well as its effectiveness and application in law enforcement. However, one principle that does qualify is the principle of tolerance for the formulation of criminal offences.

It can be concluded that in terms of rules and concepts, criminal tax law in Indonesia follows the principle of *ultimum remedium*, namely the principle that criminal action must be the last step or last option taken. However, in practice, it appears that the approach that is more likely to be used is *primum remedium*, namely the tendency to apply criminal sanctions as the first step in responding to tax violations. The emphasis on *primum remedium* in the practice of tax criminal law in Indonesia can be reflected

in the direct examination of taxpayers based on evidence of the initiation of tax crimes. Although the principle of *ultimum remedium* remains in the rules and concepts, the adaptation of practice to *primum remedium* shows that the implementation of tax criminal law can still be improved to be more consistent with this principle. This is important so that tax law enforcement remains fair, proportional and pays attention to taxpayers' rights, as well as minimizing the risk of criminal sanctions which could have a serious impact on individuals or business entities.

The application of the *ultimum remedium* principle in tax crimes is expected to create a fairer, more transparent, and effective tax system. By prioritising the use of criminal sanctions as a last resort, it is expected that tax law enforcement will become more proportional and based on justice. In other words, only in cases where criminal action is absolutely necessary to enforce reasonable tax compliance, criminal sanctions should be applied.

The application of the *ultimum remedium* principle is expected to make tax law enforcement more efficient. The main focus will be on prevention, education, and timely and proportionate enforcement. This can help reduce the administrative burden on taxpayers who comply with the law as well as optimise the use of enforcement resources.

Furthermore, it can lead to an overall increase in tax compliance. By emphasising a more educative approach and proactive deterrence, the tax system can build better awareness among taxpayers about their obligations and the consequences of tax offences.

Finally, it can help build public trust in the tax system. By ensuring that criminal sanctions are only used as a measure of last resort, the tax system can be viewed as fairer and in accordance with the values of fairness and proportionality upheld by society. This can help reduce distrust of tax authorities and strengthen the integrity of the tax system as a whole.

4. CONCLUSION

The principle of *ultimum remedium* in Indonesia began to be implemented since the first tax reform era in 1983, and the delivery of this concept was carried out indirectly. The application of criminal sanctions norms as a final solution, together with the legal teachings of *idee des recht* as rules of recognition and general statements, has an important role as a tool to overcome uncertainty in positive law. However, it is necessary to emphasize first regarding the choice of applying tax criminal sanctions as the main or final solution, by ensuring alignment and conformity between these principles and concrete regulations in the law. This aims to ensure that legal principles can carry out their function effectively in dealing with existing uncertainties. The application of the *ultimum remedium* principle in handling tax offences must be in line with the social and technological changes that occur. This involves adjustments in tax law enforcement strategies to ensure that the *ultimum remedium* principle remains effective and relevant in dealing with tax offences in this modern era. In addition, cooperation from various parties is required to identify new challenges arising and develop appropriate solutions. Thus, a holistic juridical study that is responsive to social and technological changes is key to ensuring the successful application of the

ultimum remedium principle in tax law enforcement that is fair, effective, and in accordance with the needs of society and the times.

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